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ALCON ENTERTAINMENT, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALCON ENTERTAINMENT, LLC,
a Delaware Limited Liability
Company,

Plaintiff,

v.

TESLA, INC., a Texas Corporation;
ELON MUSK, an individual;
WARNER BROS. DISCOVERY,
INC., a Delaware Corporation;

Defendants.

CASE NO. 2;24-CV-09033-GW-RAO

**FIRST AMENDED COMPLAINT
FOR:**

- 1) DIRECT COPYRIGHT
INFRINGEMENT [17 U.S.C. § 501]**
- 2) VICARIOUS COPYRIGHT
INFRINGEMENT [17 U.S.C. § 501]**
- 3) CONTRIBUTORY COPYRIGHT
INFRINGEMENT [17 U.S.C. § 501]**
- 4) FALSE AFFILIATION AND/OR
FALSE ENDORSEMENT [15
U.S.C. § 1125(a)(1)(A)]**

DEMAND FOR JURY TRIAL

1 Plaintiff Alcon Entertainment, LLC (“Plaintiff” or “Alcon”), through its
2 attorneys, hereby alleges its First Amended Complaint (“FAC”) against defendants
3 Tesla, Inc. (“Tesla”), Elon Musk (“Musk”), and Warner Bros. Discovery, Inc.
4 (“WBDI”) (collectively, “Defendants” and each separately a “Defendant”):

5 **SUBJECT MATTER JURISDICTION**

6 1. The Court has federal question subject matter jurisdiction per 15
7 U.S.C. § 1121(a), 28 U.S.C. §§ 1331 and 1338(a) and (b), and on the grounds that
8 this is a civil action arising under the laws of the United States. Plaintiff seeks
9 relief under the Copyright Act of 1976, as amended, 17 U.S.C. §§ 101, *et al.*, and
10 the Lanham Act, 15 U.S.C. §§ 1125(a)(1)(A), in interstate commerce.

11 **SUMMARY OF DISPUTE**

12 2. This is a case about a car maker improperly borrowing the storytelling
13 power of a Hollywood movie for a car advertisement. That is an old, long-
14 prohibited kind of scheme. In a sorcerer’s apprentice kind of way, Musk and Tesla
15 opened their artificial intelligence spell book to do it faster and more cheaply than
16 perhaps any car maker had before them. However, the fact that artificial
17 intelligence (“AI”), in its ubiquity, now makes it so much faster and easier for
18 scurrilous actors to violate creator rights often simply means old wrongs are just
19 dressed up in new twenty-first century clothes. Such is the case here.

20 3. Defendants requested permission to use an iconic still image (Exhibit
21 A) from Alcon’s “Blade Runner 2049” motion picture (“BR2049” or the “Picture”)
22 to promote Tesla’s new fully autonomous cybercab in an October 10, 2024 event
23 titled “We Robot.” The event was to be, and was in fact, livestreamed worldwide
24 from WBDI’s Burbank, California studio lot. When Alcon was informed just
25 hours prior to the commencement of the event that Defendants wanted BR2049 to
26 somehow be wrapped into it, Alcon refused all permissions. More than that, Alcon
27 adamantly objected to Defendants suggesting any affiliation whatsoever between
28 BR2049 or Alcon on the one hand, and Tesla, Musk or any Musk-owned company,

1 on the other. Musk and Tesla used an admittedly AI-generated image to do it
2 anyway, and WBDI facilitated or ratified the bad conduct.

3 4. Musk and Tesla wanted to leverage BR2049 to advertise cars,
4 specifically including BR2049's main character and the Picture's iconic "Las
5 Vegas Sequence." In the sequence, the artificially intelligent android main
6 character K (played by Ryan Gosling) explores the irradiated, orange-lit ruins of a
7 post-apocalyptic Las Vegas, seeking answers to existential questions about his own
8 past. He also seeks the truth about the human-AI social compact in the Picture's
9 story: a human-as-god-like-master/AI android-as-slave compact which the Picture
10 both presents and calls into question. In Las Vegas, K hopes to find and confront
11 the long-lost Deckard -- the lead character from the original 1982 "Blade Runner"
12 motion picture ("1982 Picture"), played in both works by Harrison Ford. Exhibit B
13 shows sample still images from BR2049's Las Vegas Sequence.

14 5. After Alcon refused permission to use the Exhibit A still image, Musk
15 and Tesla used an AI image generator to create their own near-photo-realistic
16 illustration of K exploring the ruined Las Vegas. (Exhibit C.) Musk put Exhibit C
17 into his presentation as the second slide, and displayed it full screen for 11 seconds
18 on the global livestream feed as his presentation opener. Lest anyone in the live or
19 livestream audience not understand what Exhibit C was a picture of, Musk in his
20 opening voiceover clearly identifies the image as an illustration of the "Blade
21 Runner" movie set in a world which has suffered a "bleak apocalypse," where "he"
22 (meaning the particular blade runner in question) is wearing a "duster" (trench
23 coat) while he surveys the distinctly orange-lit ruins of a city in the apocalyptic
24 space. That description, especially in connection with the visual elements present
25 in Exhibit C, only matches a single motion picture in all of Hollywood, or
26 anywhere else: BR2049. There is also only one blade runner character that fits that
27 description: K.

28 ///

1 6. Musk tried awkwardly to explain why he was showing the audience a
2 picture of BR2049 and K and talking about them, when he was supposed to be
3 talking about his new product. He really had no credible reason, or none that
4 doesn't come back to wanting to borrow the storytelling power and expression of
5 that particular Hollywood motion picture to sell cars and the car company. Musk
6 ostensibly invited the global audience to think about the cybercab's possibilities in
7 juxtaposition to BR2049's fictional future. But it all exuded an odor of thinly
8 contrived excuse to link Tesla's cybercab to strong Hollywood brands at a time
9 when Tesla and Musk are on the outs with Hollywood.¹ Which of course is exactly
10 what it was.

11 7. It was hardly coincidental that the specific Hollywood film which
12 Musk actually discussed to pitch his new, fully autonomous, AI-driven cybercab
13 was BR2049 – a film which just happens to feature a strikingly-designed,
14 artificially intelligent, fully autonomous car throughout the story. Especially where
15 Defendants had asked Alcon's permission to use BR2049 and been so firmly
16 refused, this was clearly all a bad faith and intentionally malicious gambit by at
17 least Musk and Tesla to misappropriate BR2049's storytelling power and BR2049
18 and Alcon's brand goodwill to advertise, market and sell Tesla's automobiles and
19 Tesla as a company. Indeed, the rest of the opening was stilted and stiff.

20 8. Musk and Tesla's idea to borrow from or link to Hollywood motion
21 pictures to advertise cars is far from new. The motivations behind it, and why the
22 law does not allow even seemingly short or limited references to famous motion
23 pictures in car ads without permission, have to do with the especially powerful
24

25
26 ¹ See, e.g., Brett Berk, "Hollywood Can't Ditch Its Tesla's Fast Enough: 'They're
27 Destroying Their Leases and Walking Away,'" *The Hollywood Reporter*, September
28 20, 2024, <https://www.hollywoodreporter.com/lifestyle/lifestyle-news/tesla-robotaxi-warner-bros-reveal-hollywood-rejection-elon-musk-1236007945/>.

1 nature of Hollywood movies, and how easy it can be to evoke the full influencing
2 power of a famous movie with even just one reference.

3 9. Historian Yuval Noah Harari² teaches that, more than using tools or
4 harnessing fire, humanity's transcending evolutionary superpower is the ability to
5 engage in persistent exercises of shared imagination. Through the power of stories,
6 transmitted first by oral tradition, and later by technologies like books and movies
7 that tangibly capture expression, humans have the unique ability to build and
8 maintain worlds and constructs that may not exist in the physical universe. Yet,
9 these worlds and constructs nonetheless can endure as powerful intersubjective
10 realities in the shared consciousness of millions or even billions of individual
11 human beings.

12 10. Powerful stories can organize, inspire, manipulate or even control
13 huge numbers of people, sometimes separated by vast distances of space or even
14 time. Through the power of stories captured in printed materials, or transmitted
15 over radio, or broadcast over television, or carried by innumerable other media, the
16 work of talented creators has been used for thousands of years to build global
17 empires, maintain religious institutions, and send people to the moon.

18 11. For at least several decades, salesmen have specifically used the
19 storytelling power of popular Hollywood motion pictures to sell cars, including
20 through product placement, where a car makes a branded appearance within a
21 motion picture. Carmakers also do the inverse, borrowing story elements from
22 Hollywood movies and incorporating them into car commercials through
23 agreements with motion picture rights owners:

24 The car commercial used to be a pretty predictable affair: a shiny new
25 sedan driving through a downtown Los Angeles tunnel or across Big

26 ² Yuval Noah Harari, *Sapiens: A Brief History of Humankind* (HarperCollins 2015)
27 and *Nexus: A Brief History of Information Networks From the Stone Age to AI*
28 (HarperCollins 2015).

1 Sur's Bixby Bridge, unencumbered by traffic, or a celebrity espousing
2 the gadget-laden features of an SUV or minivan. ... [¶] Many tried
3 product placement deals, but such deals don't guarantee prime
4 exposure for a company's product. ... [¶] [I]n the latest series of
5 campaigns, a variety of carmakers have put a twist on the typical
6 product placement deal. They've appropriated hit films and popular
7 film characters, making them the focus of the spots.

8 M. Graser, "Car Commercials Borrow From Movies to Make Their Own Stories,"
9 *Variety*, March 31, 2014 [https://variety.com/2014/film/features/1201150512-
10 1201150512/](https://variety.com/2014/film/features/1201150512-1201150512/)

11 12. Mr. Graser's *Variety* piece is from 2014, but the practice of
12 automakers evoking famous Hollywood motion picture properties in their car ads
13 started at least nineteen years earlier. Automakers tried to do it without permission
14 from, or any payment to, the motion picture creators, but the judiciary quickly shut
15 that down. *See, e.g., Metro-Goldwyn-Mayer, Inc. v. American Honda Motor Co.,*
16 *Inc.*, 900 F.Supp. 1287 (C.D. Cal. 1995) (granting injunction against Honda and its
17 ad agency for evoking MGM's James Bond motion pictures in television
18 advertisements for the then-new Honda Del Sol).

19 13. Responsible car makers and ad agencies now ask permission from
20 studios first, and, if permission is granted, negotiate and pay meaningful
21 compensation. Because Hollywood motion picture storytelling power is so strong
22 not just in the United States but globally, responsible car makers still covet it for
23 their advertising campaigns even though they have to pay (a lot) for it:

24 "You can't underestimate how the entertainment community
25 influences audiences around the world." says Audi of America
26 president Scott Keogh. Connecting with entertainment keeps Audi "in
27 the conversation," he says.

28 M. Graser, *supra*, *Variety*, March 31, 2014.

14. The financial magnitude of the misappropriation by Defendants here
was substantial. Alcon has spent decades and hundreds of millions of dollars

1 building the BR2049 brand into the famous mark that it now is. The words “Blade
2 Runner 2049,” the words “Blade Runner” used in contexts that specifically evoke
3 BR2049 distinct from the original 1982 “Blade Runner” motion picture, visual
4 images or audiovisual presentations which evoke BR2049’s main character “K,”
5 and/or which evoke iconic sequences and settings from BR2049, are all protected
6 marks and trade dress with secondary meaning. All of these marks and trade dress
7 connote BR2049 and its producer as the source of goods and services, or that there
8 is an affiliation of the advertiser with BR2049 and the Picture’s producer.

9 15. Alcon’s BR2049 marks and trade dress clearly have secondary
10 meaning in the automotive market space. Alcon has an established record of doing
11 business with major automotive brands to affiliate themselves and their car
12 products with Alcon and BR2049. These deals have had total dollar price tags well
13 into the eight figures, including at least one contract for direct cash payments to
14 Alcon in the six figures (hundreds of thousands of dollars), plus guaranteed media
15 spends for Alcon’s benefit in the eight figures (tens of millions of dollars).³

16 16. The financial stakes and complexity of BR2049 automotive brand
17 affiliations were especially high at the time of the “We Robot” event. As of
18 October 10, 2024, Alcon was in talks with at least one automotive brand for
19 partnerships on Alcon’s BR2049-based *Blade Runner 2099* television series
20 currently in production, and Alcon intends to try to resume such talks. Defendants’
21 conduct is likely to cause confusion among Alcon’s potential brand partner
22 customers, and may have already caused actual confusion with potential *Blade*
23 *Runner 2099* car partners.

24
25
26 ³ The referenced contract was for an aggregate of ten (10) seconds of on-screen time
27 in the relevant context there, and not a consecutive ten seconds, either. Eleven
28 consecutive seconds of on-screen time tying a car brand to a movie is a marketing
and advertising eternity.

1 17. Beyond these more ordinary commercial issues, there is the
2 problematic Musk himself. The unauthorized and unwanted association of Musk
3 with BR2049 and Alcon is its own commercial problem. Any prudent brand
4 considering any Tesla partnership has to take Musk's massively amplified, highly
5 politicized, capricious and arbitrary behavior, which sometimes veers into hate
6 speech, into account. If, as here, a company or its principals do not actually agree
7 with Musk's extreme political and social views, then a potential brand affiliation
8 with Tesla is even more issue-fraught. Alcon did not want to be affiliated with
9 Musk, Tesla, or any Musk company, for all of these reasons.

10 18. All of this happened because WBDI contracted with Tesla, essentially
11 loaning Tesla the studio lot for the "We Robot" event for what Plaintiff alleges was
12 a highly lucrative deal. That made it difficult and problematic for WBDI to keep
13 Musk bounded by well-established rules of the business. WBDI ultimately failed
14 to do so when it could have, to Alcon's significant damage.

15 19. Now BR2049 and Alcon unfortunately and falsely are so affiliated,
16 and far beyond the 11 seconds of presentation time at the cybercab "We Robot"
17 live event. The event's worldwide livestream X feed, including Musk's BR2049-
18 infused opening, was re-posted by Tesla, Musk, X and others thousands of times,
19 with millions of total views. The false affiliation between BR2049 and Alcon on
20 the one hand, and Tesla and Musk on the other hand, is irreparably entangled in the
21 global media tapestry, all as Defendants knew would inevitably happen.

22 20. This was and is all highly offensive to Alcon's right to commercial
23 and cultural self-determination. It is also directly financial damaging to Alcon.
24 The fair market value of the brand affiliation goodwill that Defendants stole -- and
25 the damage to Alcon's BR2049 brand and goodwill -- is at least in the six figures
26 and possibly much higher. Defendants have also muddied the waters for Alcon's
27 in-progress exploration of automotive brand partnerships for the upcoming
28 BR2049-based *Blade Runner 2099* television series.

21. Alcon now seeks relief under the United States Copyright Act and the Lanham Act, for damages and to pry Musk and his co-Defendants away from Alcon's BR2049 brand and goodwill.

PERSONAL JURISDICTION OVER DEFENDANTS

22. Per Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure, this Court has personal jurisdiction over any defendant who is subject to the jurisdiction of any California court of general jurisdiction. California's long arm statute, *Cal. Code Civ. Pro.* § 410.10, allows courts in the state to exercise personal jurisdiction over parties to the full extent permissible under the United States Constitution. Personal jurisdiction over the Defendants here is thus proper if it comports with due process. It does, including for the following reasons.

Personal Jurisdiction Over Tesla

23. General Personal Jurisdiction: The Court has general or unlimited personal jurisdiction over Tesla. Tesla is currently incorporated under the laws of the State of Texas and its principal corporate office or headquarters is in Austin, Texas and has been since about December 2021. However, California was Tesla's original principal corporate office home state, from Tesla's inception in about 2003 until the December 2021 move to Texas. Tesla still maintains continuous and systematic contacts with California, including continuing to operate at least two major manufacturing plants in the state.

24. Specific Personal Jurisdiction: Additionally and/or in the alternative, the Court has specific or limited personal jurisdiction over Tesla. Alcon's claims arise out of Tesla's purposeful availment of the rights, privileges, and protections of doing business in California, and also arise out of Tesla's commission of tortious activity in California and purposeful direction of tortious conduct toward the forum state. Tesla committed the acts of infringement alleged herein, or substantial portions of them, in preparation for and during the course of the October 10, 2024 cybercab product reveal event at WBDI's Burbank, California studio lot. The

1 event was personally conducted by Musk who is Tesla's founder, principal and
2 Chief Executive Officer. Tesla's acts of copyright infringement and violations of
3 the Lanham Act all constituted torts directed toward Alcon, a forum resident, and
4 relate to the motion picture industry, which is of compelling interest to the forum
5 state. Exercise of personal jurisdiction over Tesla also is reasonable and fair.

6 ***Personal Jurisdiction Over Musk***

7 25. The Court has at least specific or limited personal jurisdiction over
8 Musk as an individual. Plaintiff's claims against him arise out of his acts of
9 purposeful availment of the benefits and privileges of conducting activities in
10 California, including where he personally conducted the event from the WBDI lot
11 in Burbank, California. Plaintiff's claims also arise out of Musk's commission of
12 tortious acts while physically present in the forum state. His acts also constituted
13 purposeful direction of tortious conduct to the forum, all for the same specific facts
14 and reasons as described above regarding Tesla personal jurisdiction. Exercise of
15 personal jurisdiction over Musk as an individual also is reasonable and fair. At any
16 given time depending on stock market fluctuations, Musk is reportedly the richest
17 man in the world and has ample resources to defend himself in California court.

18 ***Personal Jurisdiction Over WBDI***

19 26. The Court has general or unlimited personal jurisdiction over WBDI.
20 WBDI is incorporated under the laws of the State of Delaware and its principal
21 corporate office or headquarters is in New York. However, WBDI has continuous
22 and systematic contacts with California, including owning and operating one of
23 Hollywood's oldest major motion picture and television studios including the
24 Warner Bros. Studios lot in Burbank, California.

25 27. Additionally and/or in the alternative, the Court has specific or limited
26 personal jurisdiction over WBDI. Alcon's claims arise out of WBDI's purposeful
27 availment of the rights, privileges, and protections of doing business in California.
28 They also arise out of WBDI's commission of tortious activity in California and

1 purposeful direction of tortious conduct toward the forum state. WBDI's
2 involvement in acts of copyright infringement and violations of the Lanham Act all
3 constituted torts directed toward Alcon, a forum resident. They all relate to the
4 motion picture industry, an industry in which the forum state has a compelling
5 interest. Exercise of personal jurisdiction over WBDI also is reasonable and fair.

6 **VENUE**

7 ***28 U.S.C. § 1391(b)(2) Venue as to all Defendants***

8 28. Venue is proper as to all Defendants pursuant to 28 U.S.C. §
9 1391(b)(2), because a substantial part of the events or omissions giving rise to
10 Alcon's claims occurred, or a substantial part of the property that is the subject of
11 the action is situated, within this judicial district. The infringed property in
12 question includes Alcon's copyright in BR2049 and ownership of BR2049 marks
13 and goodwill, which property is all located within this district for venue purposes,
14 where Alcon has its corporate headquarters in Los Angeles, California.

15 ***Additional Venue Bases***

16 29. Venue also is proper as to WBDI and Tesla pursuant to 28 U.S.C. §§
17 1400(a) and 1391(d). For venue purposes, Tesla and WBDI each reside in or may
18 be found within this district. Tesla and WBDI each have continuous and
19 systematic contacts with the forum state and this district specifically, including
20 sufficient contacts with this district to establish personal jurisdiction in this district,
21 if this district were treated as a separate state.

22 **PARTIES**

23 ***Plaintiff***

24 30. Alcon is an independent motion picture and television studio whose
25 products are distributed worldwide. Alcon is a limited liability company organized
26 under the laws of the State of Delaware, with its principal place of business at
27 10390 Santa Monica Blvd., #250, Los Angeles, California 90025.

28 ///

31. Alcon produced BR2049 and owns the BR2049 copyright and the BR2049 marks and brand at issue in this action. Alcon has produced more than thirty other major motion pictures, including “The Blind Side” (which won the 2009 Academy Award for Best Actress), the “Dolphin Tale” series, the “Sisterhood of the Traveling Pants” series, “Book of Eli,” “P.S. I Love You,” “My Dog Skip,” “Prisoners,” and “The Garfield Movie.” Alcon also produces television, including the critically acclaimed television series *The Expanse*. Alcon is currently in production on a “Blade Runner 2049” sequel or spinoff television series entitled *Blade Runner 2099*.

Defendants

32. Tesla: Tesla is a well-known developer and manufacturer of electric automobiles. Some of Tesla's automobile products are marketed as partially or fully autonomous. The idea of AI-controlled or otherwise autonomous automobiles is a Tesla brand focus.

33. Musk: Musk is Tesla's founder, largest shareholder and Chief Executive Officer. In addition to owning and operating Tesla, he also owns and operates the social media platform X (formerly Twitter) and the rocket and satellite company SpaceX, among other ventures. Musk has become an increasingly vocal, overtly political, highly polarizing figure globally, specifically including U.S. consumers, and especially in Hollywood.

34. WBDI: WBDI is one of the largest entertainment conglomerates in the world. Plaintiff is informed and believes that WBDI is the specific corporate entity within the WBDI conglomerate which actually owns the Warner Bros. Studios lot in Burbank, California, including substantially all real property and improvements thereon, including without limitation telecommunications infrastructure and systems over which the October 10, 2024 We Robot presentation was transmitted. WBDI is currently run by its Chief Executive Officer, David Zaslav, a man who is both friendly with Musk and controversial in Hollywood in his own right. Plaintiff

1 is informed and believes that the business relationship with Musk and Tesla and the
2 October 10, 2024 We Robot events and related business arrangements were
3 significant enough to the overall WBDI conglomerate, that even with respect to
4 matters usually or sometimes left to WBDI subsidiaries and the employees of same,
5 the event, at the very least as to the disputed matters that are the subject of this
6 FAC, was actively monitored by, supervised by, and ultimately controlled by and
7 directed by executives at the WBDI level, and not at a lower level of the WBDI
8 conglomerate, such as lower level executives at Warner Bros. Pictures.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 **The Infringed Work for Copyright**

11 35. Copyright Infringed Work. Alcon is the owner and, as to all rights at
12 issue herein, the exclusive copyright holder, of the BR2049 motion picture. In
13 copyright terms of art, BR2049 is both a “motion picture” and the “infringed
14 work.” The Picture is registered with the United States Copyright Office under
15 registration number PA0002056792 and has been since October 6, 2017.

16 36. BR2049 is itself a “derivative work” in copyright terms. It is a sequel
17 to the 1982 Picture starring Harrison Ford as the lead character, Deckard, a
18 professional “blade runner” -- a government sanctioned hunter and killer of
19 replicants, or synthetic, artificially intelligent humans. In or about 2011 (with some
20 supplemental rights acquisitions after, but all completed years before the issues
21 arising now), Alcon acquired a broad set of rights in the 1982 Picture and
22 underlying properties. Alcon’s rights include substantially all rights to make any
23 derivative works of the 1982 Picture in any manner or medium that appears
24 relevant to the action.

25 37. Exhibits A and B Relative to the Infringed Work. The images in
26 Exhibits A and B to this FAC are not themselves the copyright office-registered
27 “infringed work” claimed, nor are they “photographs” or “pictorial, graphic, and
28 sculptural works” in the copyright term of art context here. It is true that some or

1 all of them properly qualify as “derivative works” in their own right, if taken on a
2 standalone basis. An action theoretically could be pursued with some or all of
3 them as themselves the “infringed work,” separated from BR2049, and subject to
4 perfection of the appropriate derivative work registrations. But that is not this
5 action, at least not at present. Rather, as presently alleged, in the terminology of
6 the United States Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.*, the
7 images in Exhibits A and B are examples of “still images” from the Picture – in
8 particular from the core dramatic sequence that appears in BR2049 at runtime
9 1:36:28-1:37:59, and continuing at 1:40:48-2:01:50 (“Las Vegas Sequence”). The
10 Exhibit A image appears in BR2049 at about 1:37:55 in the Picture’s run time. The
11 Exhibit B images are from points in the run time between 1:36:28-1:37:59,
12 1:40:48-1:43:35, and 1:51:30-2:01:50.⁴

13 38. Exhibit A is the specific still image from BR2049 in which
14 Defendants expressed licensing interest for the “We Robot” event.

15 39. The Exhibit B images are examples of other actual still images from
16 the Las Vegas Sequence referenced above, but only a tiny fraction of the still
17 images actually in it. Motion pictures like BR2049 create the impression of motion
18 through the persistence of vision principle. Still images are displayed rapidly in
19 sequence, typically at the rate of 24 frames per second, which human vision
20 perceives as an uninterrupted continuously moving image. BR2049’s Las Vegas
21 Sequence runs for about 1,414 seconds or about 33,936 frames. This makes it not
22 practically feasible to attach captured still images of every one of the frames in the
23 Las Vegas Sequence to the FAC, or even a quantitatively significant fraction.

24 40. Proper Analytic Framework For Identifying Protected Elements
25 Where The Infringed Work Is A Motion Picture. The distinction between “motion
26 _____

27 ⁴ Alcon has noted the respective run time references next to each image, directly on
28 Exhibits A and B.

1 picture still images” and “photographs” is more than a mere statutory technicality.
2 The two types of tangible expression operate differently expressively in the real
3 world, and they are treated differently analytically under copyright law.

4 41. Still images recognizably from BR2049, especially if from
5 qualitatively important scenes or sequences, are themselves protected elements of
6 the Picture. If one or more actual still images is literally copied (by, for instance,
7 putting it into an AI image generator), the test for whether that is unlawful
8 appropriation does not involve any extrinsic/intrinsic analysis of the infringed work
9 (but testing unlawful appropriation in such a circumstance, and whether there is
10 any fair use defense, may involve the “heart of the work” test).

11 42. Still images recognizably from BR2049, especially if from
12 qualitatively important scenes or sequences, are also more than just protected
13 elements of the Picture that can be looked at alone: they are effective vehicles for
14 quickly evoking other protected elements of the Picture. As is true with many
15 famous motion pictures, the display of a single image from, for example, BR2049’s
16 Las Vegas Sequence, can immediately evoke protectable elements of the Picture to
17 the audience -- like the Picture’s plot, theme, dialogue, mood, setting, pace,
18 characters, and sequence of events – even if those elements cannot be visually
19 identified directly in the still image in question. An infringing work that looks like
20 it is or might be a still image from BR2049, can powerfully evoke some or all of
21 the entire Picture’s plot, theme, dialogue, mood, setting, pace, characters and
22 sequence of events in this same way -- especially if such an emulated image is
23 openly characterized by the presenter as meant to be a still from or illustration of
24 BR2049 or protected elements of its story (as happened here).

25 43. That is a kind of expressive superpower that ordinary standalone
26 photographs do not have. Copyright explicitly recognizes that photographs and
27 still images of motion pictures are not the same thing, in the Copyright Act’s
28 different statutory treatment of “motion picture still images” relative to the

1 statutorily separate category of “photographs.” *See, e.g.*, 17 U.S.C. §§ 101, 106.
2 This distinction tracks to differences in their expressive power.

3 44. Standalone photographs can be very powerful to evoke ideas,
4 concepts, feelings and even whole social movements or histories, well beyond the
5 shapes and colors within the four corners of the image – *see, e.g.*, Jeff Widener’s
6 1989 photograph of Tiananmen Square’s “Tank Man”; Alfred Eisenstadt’s 1945
7 photograph “V-J Day Kiss in Times Square”; or the crew of Apollo 8’s December
8 1968 “Earthrise.”

9 45. Still images from motion pictures (or emulations of such images,
10 especially if held out by the infringer to the audience to be such) can do such
11 things, too, but they can also do something else. Even a single still image from a
12 motion picture can evoke the motion picture’s entire more specific set of
13 expressive elements in the mind of the audience. Consider for example a still
14 image of a rumpled young Dustin Hoffman bisected by the nylon-stockinged leg of
15 a woman who’s face isn’t shown: if it’s the right one, we all know from just that
16 one shot that the movie is 1968’s “The Graduate,” and that the woman is Ann
17 Bancroft’s Mrs. Robinson. Or, of more recent vintage, a still image of a tension-
18 wrought Zendaya in a blue dress, eyes masked by sunglasses, as she sits in a larger
19 audience watching a contest or spectacle not shown: to anyone who has seen the
20 movie, and perhaps even to many who only have familiarity that the movie exists,
21 the recognition that the image is from 2024’s “Challengers” is easy and immediate.

22 46. This phenomenon of human perception goes beyond the audience just
23 being able to identify which movie it is from a single still image. A sufficiently
24 recognizable motion picture still image goes further and evokes in the audience’s
25 mind some or all of the larger motion picture’s story elements, like plot, themes,
26 dialogue, mood, setting, pace, characters and sequence of events. This is because
27 tremendous creative resources were previously expended to have the movie come

28 ///

1 into tangible existence, as a powerful vehicle to move (and maintain) those
2 elements in the audience's shared imagination.

3 47. As Harari might put it if he were a copyright lawyer, both a standalone
4 photograph and a single still image from a motion picture can transport the
5 audience to a specifically shared intersubjective reality, bringing them together or
6 otherwise influencing them (a kind of "gating," one might say). From a copyright
7 law perspective though, the way the gating occurs is very different as between the
8 two types of works (photographs and motion picture still images). The photograph
9 gates to ideas, concepts, feelings, social movements or histories that may exist in a
10 human shared imagination at some level (and probably do), but not as specifically
11 as with a motion picture still image, and also, extremely relevant to copyright law,
12 not preserved in a specifically copyright-protected space. In contrast, a still image
13 from a motion picture gates to a shared imagination that is more specifically
14 delineated (by the motion picture and its elements), and that also actually exists
15 captured in a tangible form of expression which copyright law does protect (a
16 "motion picture").

17 48. Existing copyright law as literally applied already dictates that motion
18 picture still images are to be treated analytically differently than photographs. The
19 two were consciously placed by Congress in different statutory categories: in
20 section 101 of the Copyright Act, movie still images are defined as and treated as
21 parts of "audiovisual works," rather than as "pictorial, graphic and sculptural
22 works," where "photographs" in contrast specifically are "pictorial, graphic and
23 sculptural works."

24 49. Substantiality similarity comparison case law similarly makes clear
25 that the elements of a work to look at analytically to determine what is protected
26 and what is not, depend on what kind of "work" the "infringed work" statutorily is.
27 For example, under the Ninth Circuit's extrinsic/intrinsic analytical test, if the
28 infringed work is a "motion picture," the extrinsic test must be analyzed in the

1 context of elements like plot, themes, dialogue, mood, setting, pace, characters, and
2 sequence of events. In contrast, if the infringed work is a “photograph,” the
3 extrinsic test is analyzed under a different set of elements: subject matter, pose,
4 lighting, camera angle, depth of field, and others (and the outcome for
5 photographer plaintiffs in copyright infringement cases tends to be more
6 Draconian).

7 50. Alcon respectfully submits that Congress meant what it said, and so
8 does existing case law: motion pictures (and still images from them) and
9 photographs are two different categories of works, and they must be treated
10 analytically differently, including as to identification of protectable elements.
11 Alcon also respectfully submits that makes sense, too, because of the difference in
12 storytelling gating power that the different types of images have in the real world,
13 as discussed above.

14 51. For these reasons, for instances of copying that go beyond literal
15 copying or bodily appropriation of protected elements, identification of protected
16 elements of BR2049 has to involve some level of consideration of the entire
17 Picture, including its plot, themes, dialogue, mood, setting, pace, characters, and
18 sequence of events. To facilitate that, it helps to summarize or discuss the story of
19 work and its overall elements in the pleading, as below.

20 52. BR2049 Story Summary Overview. BR2049 is a sequel to the 1982
21 Picture, and specifically a post-apocalyptic one (to the original’s mere dystopia).
22 An overview of BR2049’s elements is first helpfully informed by discussion of the
23 1982 Picture.

24 53. 1982 Picture - Story Overview. The 1982 Picture is set in a fictional
25 2019 Los Angeles. Artificially intelligent androids or replicants exist, but only
26 essentially as slaves who must stay away from Earth, in off-world colonies, on
27 penalty of death. The 1982 Picture’s story opens in a Los Angeles saturated by
28 constant advertising, shrouded in perpetual darkness and light rain, and with the

1 city being stalked by four rogue replicants who escaped to Earth in search of their
2 human maker. Blade runners are tasked with finding the rogue replicants and
3 “retiring” (killing) them.

4 54. In the 1982 Picture, after the blade runner initially assigned to the case
5 is hospitalized by one of the rogue replicants, Deckard is conscripted from an
6 ambiguous state of retirement or inactive duty by his former superiors in the Los
7 Angeles Police Department to find the rogue replicants and retire them. To aid his
8 search by better familiarity with current replicant technology, Deckard is sent to the
9 corporate headquarters of the replicant maker (Tyrell) and introduced to Rachel.

10 55. Rachel is a new replicant model – one even more difficult to
11 distinguish from humans than earlier models, and implanted with a full set of false
12 human memories. The illusion is so effective that Rachel is herself unaware she is
13 a replicant, until Deckard’s testing of her empathy responses reveals the truth to
14 her. Rachel becomes a fugitive replicant, whom Deckard’s superiors add to his
15 target list. Deckard and Rachel become lovers. The 1982 Picture is famously
16 ambiguous about whether Deckard is or is not himself a replicant. If Deckard is a
17 replicant, he is unaware of it; however, the possibility gnaws at him at varying
18 levels depending on the particular cut of the film (there are several). After the
19 original four rogue replicants are all terminated, the 1982 Picture ends with
20 Deckard and Rachel fleeing as fugitive lovers, leaving their future undetermined.

21 56. The initial theatrical version of the 1982 Picture sets the mood of
22 Rachel and Deckard’s future as sunny and hopeful. However, in Ridley Scott’s
23 director’s cut, Rachel and Deckard’s future is left ominously ambiguous. The
24 different versions of the 1982 Picture’s ending amplified the tension and
25 anticipation attached to the cliffhanger question it posed: what happens to Deckard
26 and Rachel? The 1982 Picture’s fanbase had to wait an unusual thirty-five real-
27 world years for the answer.

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1 57. BR2049 – Story Overview. Released in October 2017, BR2049 is the
2 first, and so far only, motion picture sequel to the 1982 Picture. BR2049 is set in a
3 fictional 2049, thirty years after the 1982 Picture’s fictional 2019. BR2049 tells the
4 story of the main character “K” (played by Ryan Gosling). Like the 1982 Picture’s
5 Deckard, K is a professional blade runner. Unlike Deckard, K from the beginning
6 of BR2049 clearly understands himself to be an artificially intelligent android or
7 replicant (though he becomes unsure in the middle act of the Picture). K’s human
8 superiors put him on the track of pursuing the possible existence of a wholly or
9 partially replicant child conceived by, and born to, a replicant mother (revealed
10 ultimately to be Rachel). If true, the phenomenon would re-order the entire societal
11 relationship between humans and their artificially intelligent replicant creations.
12 K’s trench coat or “duster” is the dominant feature of his wardrobe or costume.
13 Throughout the Picture, K travels in, and is assisted by, his artificially intelligent,
14 quasi-sentient flying car, or “spinner,” which is capable of autonomous action.

15 58. K’s love interest in BR2049 is Joi (played by Ana de Armas). Joi is
16 K’s personal version of an apparently mass-produced and mass-advertised
17 holographic, artificially intelligent, virtual home companion. K buys an expensive
18 emulator accessory to allow Joi to accompany him beyond her usual domestic
19 boundaries. Together, K, Joi and the artificially intelligent spinner travel to various
20 locations in search of the seemingly miraculous replicant child, eventually leading
21 them to a post-apocalyptic Las Vegas.

22 59. By that point in the Picture, K has come to suspect that he might be
23 the lost miracle child, now grown, and that, in searching for Rachel and Deckard,
24 he might be searching for his own parents, a thing he previously thought
25 impossible and only for humans. Also by that point in the Picture, unknown to K, a
26 corporate female replicant assassin (“Luv”, the antagonist in the Picture, played by
27 Sylvia Hoeks) has been tasked by her human superiors (Tyrell, the replicant maker)

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1 with finding the missing child before K does. Luv has been stalking K's progress,
2 knowing he has better information than she does about the child's location.

3 60. BR2049 Las Vegas Sequence. The Picture's Las Vegas Sequence
4 shows K's arrival in, and exploration of, the orange-colored ruins of the Picture's
5 abandoned Las Vegas, rendered uninhabitable by a dirty nuclear device many years
6 prior to the story's timeframe. The sequence follows K as he leaves the spinner
7 (with Joi's genie-bottle like emulator in his pocket) and walks in his duster toward
8 and through the misty orange urban desert ruins, often viewed by the camera from
9 behind or in silhouette. The sequence includes K's walk through the Las Vegas
10 ruins, leading up to and foreboding the Picture's dramatic apogee: K's encounter
11 with his predecessor Deckard (reprised by Harrison Ford) from the 1982 Picture.

12 61. K follows signs of life (an apiary) to a ruined casino hotel. K enters
13 the building and finds an unfriendly Deckard, who tries to kill K. Throughout the
14 Las Vegas Sequence to this point, the lighting is distinctly orange, so that
15 everything appears filtered through a kind of sweetened or radioactive sepia.

16 62. The Las Vegas Sequence's lighting only changes when K's and
17 Deckard's physical conflict takes them into the building's abandoned lounge or
18 theater, where they have a one-sided fist-fight. Initially pitch black, the lounge
19 becomes partially lit by an apparently malfunctioning holographic entertainment
20 system, which intermittently displays stuttering holograms of 1960s- and 1970s-era
21 entertainers, including Marilyn Monroe, chorus line dancers, Liberace, and, most
22 prominently, Elvis Presley. As the holograms move in and out behind and among
23 the combatants, Deckard tries vainly to knock out the inhumanly durable K with
24 haymakers. K refuses to fight back, letting Deckard exhaust himself. As Elvis
25 appears again singing "Can't Help Falling In Love," Deckard finally relents and
26 invites K to have a drink instead. K accepts.

27 63. The distinctive orange lighting then resumes as K and Deckard retire
28 to a private bar on an upper floor of the building -- Deckard's private nest or aerie.

1 Its exterior walls are floor-to-ceiling windows overlooking the Las Vegas ruins. In
2 Deckard's aerie, both before and after K and Deckard talk about Rachel and the
3 missing child, the screen image is K in his duster, viewed from behind or in three-
4 quarter view, in dark silhouette, taking in the ruined Las Vegas through the picture
5 windows, all of it bathed in orange light. (*See, e.g.*, Exhibit B, final four images.)

6 64. After Deckard makes emotional revelations about Rachel and the
7 missing child, he retires to a room off-screen. K explores more of the room and its
8 contents. He causes a jukebox to display a miniature, holographic Frank Sinatra
9 who performs "One More for My Baby (And One More For the Road)," while
10 trapped in a glass bottle or dome. The genie-Sinatra is distinctly gray, black and
11 white, not orange or orange-lit like the rest of the scene. As the genie-Sinatra
12 sings, K wistfully examines small animal wood carvings clearly made by Deckard.
13 They match a small wood carving of a horse which K carries and which ties to an
14 implanted memory he has. K has come to suspect the memory might actually be an
15 impossible-yet-real memory of his own childhood. The presence of the carvings in
16 the aerie bolster K's suspicion that he is the miracle child and that Deckard is his
17 father and Rachel his mother. As the genie-Sinatra continues to sing, K picks up a
18 framed photographic portrait of Rachel and looks at it longingly.

19 65. The Las Vegas Sequence concludes with the antagonist Luv catching
20 up to K, assaulting Deckard's aerie with a mercenary force of flying cars, drones,
21 and combat replicants. K wakes up from a dream or sleep, briefly to see Joi
22 captivated by Deckard's colorful hydroponic garden, which again stands out from
23 the other visual elements in the scene as not being orange-lit, while everything else
24 is. Deckard returns from some other room and raises the alarm that there are
25 incoming hostile forces. The lighting turns even more deeply orange as Luv's
26 forces violently assault the Deckard aerie. In the assault, Deckard tries to reach his
27 old 1982 Picture spinner where he has it parked in another room of the building. K
28 follows him, but Luv arrives too soon. She and her forces destroy Deckard's

1 original 1982 Picture spinner and kidnap Deckard. Luv defeats K in hand-to-hand
2 combat. She then smashes the Joi emulator, effectively killing Joi, while K has to
3 watch helplessly. Right before being killed, Joi tells K that she loves him. Luv and
4 her forces leave K lying defeated in the rubble, ending the Las Vegas Sequence.

5 66. BR2049 Third Act. The third act of the Picture plays out broadly as
6 follows: A joint human/replicant resistance movement (seeking to topple the
7 current replicants-as-slaves social regime) rescues K. They reveal to him that they
8 know who the miracle child is, and that K is not the child (disappointingly re-
9 establishing to K that he is a replicant and not human). The resistance asks K to
10 help them by going after the captive Deckard and killing him, so that the
11 information he has about the child cannot be used against the resistance. After K
12 leaves the resistance hideaway and ponders the choice, K interacts with a giant
13 holographic advertisement of the Joi virtual companion product. The giant Joi
14 hologram tries to sell itself to him again – presenting K with the choice of going
15 back to his old life status quo, in the form of literally replacing Joi. In parallel,
16 Luv’s master (Tyrell, the head of the corporate replicant maker) makes the captive
17 Deckard a similar offer – Tyrell presents Deckard with a rebuilt Rachel, and offers
18 her to Deckard if Deckard will voluntarily help Tyrell find the child, for the
19 purpose of improving Tyrell’s replicant technology to further entrench the human-
20 as-god-like-master/AI-replicants-as-slaves status quo.

21 67. K and Deckard both reject the respective temptation offers. Tyrell
22 directs Luv to take Deckard off-world where Tyrell has better tools for torturing
23 Deckard into cooperation, and she commences to do so. K chases them down in
24 his own flying spinner, shoots their spinner out of the sky, and rescues Deckard
25 after a battle with Luv in the crashing surf where the ocean meets a giant retaining
26 wall built against rising sea levels. K kills Luv, but is severely wounded himself,
27 possibly fatally. Deckard rescues K from drowning, and Deckard expresses
28 readiness to die (implicitly for the same reasons given by the resistance). Instead

1 of K killing Deckard per the resistance plan, K suggests that they both agree to the
2 fiction that Deckard died in the surf, and that Deckard actually instead live secretly
3 and meet his missing child (a daughter, a memory maker character whom K
4 encountered earlier in his quest).

5 68. K takes Deckard in K's flying spinner to Deckard's daughter's
6 location, as snow falls. Before Deckard goes inside alone to meet his daughter, he
7 asks K for an explanation as to why K is helping Deckard. K gives no answer, but
8 does say "your daughter makes the best memories." In the penultimate scene, K is
9 left alone with the spinner, laying on a set of stairs looking skyward, as snow falls
10 down on him. The scene is ambiguous about whether K survives his injury from
11 the battle with Luv or dies. In the final scene, Deckard and his daughter see each
12 other for the first time, and the movie ends with them reaching out to touch hands.

13 69. Exhibit A Image in Story Context. The Exhibit A image is from
14 shortly after K's, Joi's and the Spinner's arrival in Las Vegas. It is an image
15 positioned from behind K, with his close-cropped hair, garbed in his distinctive
16 trench coat or "duster," as he stands next to his spinner, facing away from the
17 camera to survey the devastated orange-light-bathed Las Vegas cityscape. In the
18 Exhibit A Image, K is surveying the ruins as he prepares to set out on the walk
19 through them that will lead him to the long-lost and mysterious Deckard – the most
20 highly anticipated encounter in the Picture.

21 70. Exhibit B Image in Story Context. The Exhibit B images attached
22 hereto and incorporated herein by reference are samples of still images from the
23 Las Vegas Sequence. They include images from K's walk through the ruins to
24 encounter Deckard, and from when K is in Deckard's aerie looking out the picture
25 windows at the ruined city.

26 71. Non-Exhaustive List of Protected Elements of BR2049: Original
27 protected elements of BR2049 include, but are not limited to:

28 a. Still images from the Picture which are iconic or sufficiently

1 recognizable to by themselves be identifiable as a still image from
2 BR2049 versus any other motion picture, and especially such still
3 images which evoke one or more of the other protected elements
4 below.

5 b. The character K. Especially under storytelling theory where a “story”
6 tracks the emotional development of a character through challenging
7 periods of transition, K is the “story being told” in BR2049. K is also
8 distinctively delineated, including visually. Indeed, he is at his most
9 visually distinctive (iconically so) when depicted as a duster-clad man
10 with close-cropped hair viewed in silhouette or near-silhouette,
11 surveying or exploring a post-apocalyptic ruined cityscape bathed in
12 orange light. K is also the only character in all of motion pictures to
13 Plaintiff’s knowledge who can be described as a duster-clad blade
14 runner who surveys or explores an orange-lit post-apocalyptic ruined
15 city.

16 c. Urgent Human-AI Decision Point Theme. Science fiction is always
17 about the present in its themes and messages, and BR2049 is no
18 exception. One of BR2049’s main themes is that of society being at a
19 critical decision point as to how humans and artificial intelligence
20 relate to each other, and specifically that there are extremely
21 consequential choices about that which must be made with urgency.
22 Part of the theme is specifically that the wrong decisions will lead to
23 apocalyptic ruin. BR2049’s specific expression of the theme uses a
24 visual relationship of signaling with orange lighting in ruins, and from
25 K’s perspective. For instance, in the Las Vegas Sequence, positive
26 elements of a more happy and hopeful past or future (especially with
27 an element of nostalgia) stand out from the rest of the sequence
28 lighting in that the orange lighting is absent, either from a fragment of

1 the rest of a scene (genie-Sinatra, Deckard's hydroponic garden), or
2 for a full fight scene (K's non-fight with Deckard in the
3 malfunctioning hotel casino holo lounge). In contrast, the
4 consequences of bad decisions or pressures of the human-AI
5 relationship question going unresolved driving the characters and
6 society to ruin is expressed in the orange lighting of the ruin setting,
7 with the orange lighting becoming darker and more intense as the
8 pressure and urgency of the human-AI relationship question
9 intensifies. Autonomously capable artificially intelligent cars vehicles
10 taking the characters (us) alternatively toward and away from right or
11 wrong answers to the question is also part of the expression of the
12 theme.

- 13 d. Mood of Anxiety, Fear and Urgency, and specifically about the
14 Human-AI Decision Point: BR2049 uses story elements of apocalyptic
15 event back story, combined with specific visual elements such as
16 orange lighting, urban ruin, and the K figure in silhouette or near-
17 silhouette surveying or exploring the ruined post-apocalyptic
18 landscape (especially with the sense that, even in the ruin, there are
19 still worse things that could or might happen), all to create a mood of
20 anxiety, fear and urgency, specifically around the gravity of the
21 Human-AI Decision Point question, and the importance of making the
22 right decisions about it.
- 23 e. Setting: The setting of a post-apocalyptic urban ruin, specifically as a
24 place that holds answers or important information about the Human-
25 AI Relationship Question, bathed in orange light, and especially one
26 that is about to be explored by a blade runner in a duster shown in
27 silhouette or near-silhouette.
- 28 f. Combination of Elements: Even if one or more aspects of the above

1 protected elements list is unprotected, their use in combination,
2 especially in the context of urgent human-AI relationship questions, is
3 protectable, especially if openly labeled or presented as “Blade
4 Runner”-related by the infringer.

5 72. Protected elements identification is discussed further herein in this
6 FAC in the context of Defendants’ acts of infringement.

7 **Infringed Property for Lanham Act Context:**

8 **Alcon’s BR2049 Marks, Brand and Trade Dress**

9 73. Alcon’s “Blade Runner 2049” Mark. Alcon owns, and has
10 continuously owned since prior to 2024, an unregistered trademark in the words
11 “Blade Runner 2049.” The claimed mark is broad enough to include the words
12 “Blade Runner” in contexts that refer to or include BR2049 (such as, for example,
13 the words “Blade Runner” not followed by the number “2049,” but alongside
14 iconic images from BR2049, or other callouts to specific scenes or elements of
15 BR2049). The words “Blade Runner 2049” are fanciful or arbitrary or suggestive
16 and thus inherently distinctive. Even if only descriptive, they have nonetheless
17 achieved secondary meaning through years of continuous use in commerce by
18 Alcon, beginning no later than 2017. This includes without limitation uses in
19 motion pictures, DVDs, comic books, video games, and other merchandise items,
20 all such that the BLADE RUNNER 2049 mark is widely recognized by the general
21 consuming public of the United States as a designation of source of the goods and
22 services of Alcon (or of a single source). As detailed further below, the BLADE
23 RUNNER 2049 mark is also recognized by both the general consuming public and
24 by major car manufacturers and car brands as connoting affiliation with or
25 sponsorship by Alcon when used in connection with automobiles and automobile
26 brands (including both real automobiles, and concept automobiles).

27 74. Alcon’s “Blade Runner 2049” Brand and Trade Dress. Still images
28 from iconic scenes in BR2049, and audiovisual clips of iconic scenes from BR2049

1 have also achieved secondary meaning as trade dress widely recognized by the
2 general consuming public of the United States as a designation of source as to the
3 goods and services of Alcon (or a single source) in all of the categories identified
4 above for the BLADE RUNNER 2049 mark. As detailed further below, BR2049
5 itself, and still images from iconic scenes from it and audiovisual clips of iconic
6 scenes, are also specifically recognized by both the general consuming public and
7 by major car manufacturers and car brands as having secondary meaning connoting
8 affiliation with or sponsorship by Alcon (or a single source) when used in
9 connection with automobiles and automobile brands (including both real
10 automobiles, and concept automobiles).

11 75. Alcon's Mark or Protectable Brand Good Will in the Character "K".
12 The character "K," including descriptions of K, and visuals images that look like or
13 evoke the character K, and/or that are held out to be the character K, either
14 explicitly or implicitly, are unregistered marks and/or protectable trade dress of
15 Alcon. They have also achieved secondary meaning as trade dress widely
16 recognized by the general consuming public of the United States as a designation
17 of source as to the goods and services of Alcon (or a single source) in all of the
18 categories identified above for the BLADE RUNNER 2049 mark. Including
19 because of the close connection between K and his flying spinner in the BR2049
20 Picture, Alcon's K marks and trade dress are especially recognized by both the
21 general consuming public and by major car manufacturers and car brands as having
22 secondary meaning connoting affiliation with or sponsorship by Alcon (or a single
23 source) when used in connection with automobiles and automobile brands
24 (including both real automobiles, and concept automobiles). Sample visual images
25 of K can be seen in Exhibits A and B.

26 76. Alcon's Protectable Lanham Act Interest in Combinations of Elements
27 Evocative of BR2049. Alcon also has a protectable Lanham Act interest (mark,
28 brand or trade dress) in combinations of elements which evoke or tend to evoke

1 BR2049 in the eyes of the ordinary consumer, in relevant markets in which Alcon
2 does business or intends to do business, including without limitation in the sense of
3 licensing affiliation rights or advertising rights to car companies and car brands.
4 Pertinent here, Alcon’s protectable rights in this regard extend to showing an image
5 like Exhibit C with an accompanying voiceover discussing a “post-apocalyptic”
6 “Blade Runner” movie, especially in an overall context of robots (replicants are
7 sometimes recognized as a variation of robots) and artificially intelligent, semi-
8 autonomous or wholly autonomous cars. That combination of elements evokes
9 BR2049 under the “total effect of [the infringer’s] product and package on the eye
10 of the ordinary purchaser test” applied in cases such as *Warner Bros.*
11 *Entertainment v. Global Asylum, Inc.*, 107 U.S.P.Q.2d 1910, 2012 WL 6951315 at
12 *8 (C.D. Cal. 2012).

13 77. Alcon’s Development of the Marks and Trade Dress. The above
14 marks and trade dress and other identified protectable Lanham Act interests of
15 Alcon have achieved at least secondary meaning, and in some cases famous mark
16 status, not merely accidentally, but because of Alcon’s extensive and expensive
17 efforts. Beginning no later than 2011 and on a continuing basis ever since, Alcon
18 expended and continues to expend vast resources, in excess of \$200 million to date,
19 from original acquisition of relevant underlying rights, to development, production,
20 marketing, and distribution of BR2049, to ongoing brand development and active
21 policing of infringements, to development, production and distribution of numerous
22 derivative works, including without limitation television series, comic books, and
23 video games. Alcon also specifically has been in the business of engaging in
24 license agreements where car companies and brands license rights to affiliate their
25 car brand with BR2049’s marks and brands, since no later than 2016.

26 78. The Picture was theatrically released globally on a day-and-date basis
27 in October 2017. It received an 89% positive audience reaction on well-known
28 film review site Rotten Tomatoes. Among numerous other awards, BR2049 was

1 nominated for five Academy Awards, and it won two: Best Cinematography and
2 Best Visual Effects. IGN gaming website named BR2049 the Best Movie of the
3 Year for 2017, the Golden Tomato Awards named it the Best Sci-Fi/Fantasy Movie
4 of 2017, and the 2018 Saturn Awards named it the Best Science Fiction film.
5 BR2049 is regularly identified as one of the best science fiction movies of all time
6 on lists of such movies generated by journalists, critics, and consumers.

7 79. Alcon's efforts thus have generated robust consumer goodwill and
8 brand recognition for BR2049 and its elements, specifically including the Exhibit
9 A Image and the Exhibit B Images in the Lanham Act context, and the other marks,
10 trade dress and Lanham Act protectable elements identified in foregoing
11 paragraphs. Both the Exhibit A Image and some of the Exhibit B Images, have
12 been, and still are, prominently used by Alcon in the marketing, promotion and
13 publicity of BR2049.

14 80. The Exhibit A Image was the image used as the lead visual image for
15 numerous marketing, promotional and publicity press pieces about the Picture
16 preceding the Picture's October 2017 initial theatrical release. It is still to this day
17 the image that appears as the cover image to the official BR2049 marketing and
18 promotional trailer as that trailer appears on YouTube. It is the back cover image
19 for *The Art and Soul of Blade Runner 2049*, the coffee table book celebrating the
20 Picture's visual design elements. It thus is one of the most iconic images from the
21 Picture, and also one of the most commercially significant in a marketing sense. It
22 immediately evokes BR2049 and everything the Picture stands for, without any
23 words or other references. It is the image which Defendants specifically requested
24 to use (and were refused by Alcon).

25 81. Images from BR2049's same Las Vegas Sequence also have been, and
26 still are, used by Alcon for marketing, promotion and publicity for the Picture. As
27 just one example, the front cover of the same *The Art and Soul of Blade Runner*
28 *2049* coffee table book about the Picture is from the Exhibit B Images set (K's

1 duster-garbed silhouette moving alone through misty orange-lit emptiness).
2 Exhibit B Images and similar images from the same sequence in the Picture
3 consistently appear at, or near, the top of search engine queries about the Picture.
4 Exhibit B Images and those like them from the Las Vegas sequence -- of a
5 silhouetted trench coat-garbed (or duster-garbed) man moving through a misty
6 orange-colored ruinous urban desert landscape -- are immediately evocative of
7 BR2049, without any other cues or references required.

8 82. The Picture and its brand (including specifically the words “Blade
9 Runner” even without the year “2049,” when used in contexts that evoke BR2049
10 distinct from the 1982 Picture, and specifically including the Exhibit A Image and
11 Exhibit B Images) all have especially high resonance as to artificial intelligence,
12 advanced automotive technology, and the combination of the two. K’s spinner has
13 been recognized culturally as one of the most famous vehicles in motion picture
14 history. For example, the Petersen Automotive Museum in Los Angeles featured
15 one of the full-scale prop models of K’s spinner prominently in the museum’s
16 extended run of its “Hollywood Dream Machines: Vehicles of Science Fiction and
17 Fantasy” special exhibit which ran from 2019 to 2020. The BR2049 K spinner was
18 one of only three vehicles selected to be on the marketing one-sheet poster for the
19 Petersen exhibit, along with the time-traveling DeLorean from the “Back to the
20 Future” movies and a light cycle from “Tron: Legacy.”

21 83. Numerous major automotive brands expressed substantial interest in a
22 co-promotion brand partnership with Alcon on BR2049 prior to the Picture’s initial
23 theatrical release. K’s spinner as it appears in BR2049 is in fact visibly branded
24 under a major global automotive brand. The contract price for that theatrical
25 release co-promotion was well into the eight figures (broken up into hundreds of
26 thousands of dollars in direct cash payments to Alcon, and tens of millions of
27 dollars in guaranteed co-promotional media spend for Alcon and the Picture’s
28 ///

1 benefit), with the length of on-screen visible branding involved being only ten (10)
2 non-consecutive seconds.

3 84. BR2049 is a commercially living property, with an ongoing active
4 market for automotive brand partnerships in particular. For instance, as already
5 mentioned, Alcon is currently in production on *Blade Runner 2099*, a BR2049-
6 derived sequel or spin-off television series. At the time of the “We Robot” event,
7 Alcon was actively in the process of engaging with automotive brands for brand
8 partnerships on that project, and intends to resume such efforts if possible.

9 ***The October 10, 2024 Tesla Marketing Event and Alcon’s Express Denial of***
10 ***Defendants’ License Requests and Clear Objections to Any Affiliation***

11 85. Some of what happened among the Defendants is not yet known to
12 Plaintiff, and likely will not be known until and unless Plaintiff is allowed
13 discovery. Based on news reports, the nature of the event, and industry custom and
14 practice with respect to studio lot events, and partial information provided by
15 WBDI agents or representatives, Plaintiff makes the allegations in this paragraph
16 85 on information and belief and subject to the need for discovery: At some point
17 prior to October 10, 2024, Tesla and WBDI (or a WBDI subsidiary as the nominal
18 contracting party, but with WBDI in fact actively supervising and directing
19 decision making about the relevant facts alleged herein) entered into a contractual
20 agreement, the details of which are unknown to Alcon, but the essence of which
21 necessarily included that WBDI (or nominally a WBDI subsidiary being actively
22 directed and supervised by WBDI) would lease or license or otherwise provide
23 studio lot space, lot access, infrastructure support and other resources to Tesla for
24 the October 10, 2024 cybercab event and preparations leading up to it. The event
25 involved substantial WBDI resources and lot access, and regardless of who the
26 nominal WBDI contracting entity was, the business and contractual relationship
27 with Musk and Tesla was important enough that it was actively supervised and
28 managed by WBDI. Pre-event preparations were significant and started weeks or

1 months prior, including Tesla vehicles repeatedly driving the studio lot to map it
2 beforehand, so that about fifty fully autonomous Tesla cars could navigate the lot
3 carrying Musk and event attendees on fully driverless rides as part of the event.
4 The contract necessarily would have required substantial financial compensation to
5 be paid by Tesla to WBDI (or a WBDI subsidiary, but flowing directly into
6 WBDI's consolidated financial statements), in at least the high six figures and
7 possibly in seven figures.

8 86. Based on what actually happened at the event and the communications
9 from WBDI agents and representatives to Alcon on the day of the event, as well as
10 the absence of any substantial brand affiliation negotiation communications to
11 Alcon at earlier dates or at all, Alcon is informed and believes and subject to the
12 need for discovery thereon makes the allegations in this paragraph 86: The Tesla-
13 WBDI event contract (or another associated contract or set of understandings)
14 included a promotional element or elements, whereby Musk and Tesla expected to
15 be able to affiliate the cybercab with one or more motion pictures from WBDI's
16 motion picture library, or the motion picture library of WBDI's subsidiary Warner
17 Bros. Pictures, a division of WB Studio Enterprises Inc. ("Warner Bros. Pictures").

18 87. Warner Bros. Pictures was Alcon's domestic distributor for the 2017
19 theatrical release of BR2049 and still has some domestic distribution rights, but not
20 without limitations and restrictions. Warner Bros. Pictures has some limited and
21 ongoing "clip licensing" rights in the domestic market only, and not at all for a
22 livestream television feed. Moreover, neither Warner Bros. Pictures nor any other
23 WBDI entity owns the copyright in BR2049 or any of the Picture's marks or
24 goodwill. No WBDI entity has or ever had any non-domestic rights or permissions
25 for the Picture. Thus, neither Warner Bros. Pictures nor any other WBDI entity has
26 or ever had sufficient rights to allow Tesla to exploit BR2049 or any of its
27 elements, or any of Alcon's marks or goodwill in connection with the globally
28 livestreamed cybercab reveal event.

1 88. Warner Bros. Pictures has a longstanding course of dealing with
2 Alcon generally and on BR2049 specifically. Pursuant at least to that course of
3 dealing, and custom and practice in the industry, Warner Bros. Pictures is required
4 to, expected by Alcon to, and in fact actually does consult with Alcon and seek
5 Alcon's approval prior to brand affiliation licensing of any BR2049 elements for,
6 *inter alia*, a substantial, high-profile, and highly commercial brand affiliation,
7 especially if the affiliation is potentially controversial or politically charged, and
8 even if for only the domestic market.

9 89. Neither Warner Bros. Pictures nor any other WBDI entity or
10 representative ever communicated with Alcon at all about any potentially
11 contemplated BR2049 brand affiliation with the Tesla cybercab or the event.
12 (Even the communications that occurred from WBDI's representative to Alcon on
13 the day of the event were disingenuously in the context of a purported relatively
14 routine "clip license" request, never as the much more significant brand affiliation
15 really at issue.) That failure is inconsistent with the above long-standing course of
16 dealing, and with custom and practice in the industry.

17 90. Based on what actually happened at the event and the communications
18 to Alcon from WBDI representatives on the day of the event and since, as well as
19 the absence of certain communications to Alcon at earlier dates or at all, Alcon is
20 informed and believes and, subject to the need for discovery, makes the allegations
21 in this paragraph 90: Musk communicated to WBDI, either before Tesla entered
22 into a contract or contracts about the event, or at some point in the event planning
23 process, that Musk specifically wanted to associate the cybercab and Tesla with
24 BR2049. Musk believed (incorrectly) that in connection with the event, WBDI or
25 Warner Bros. Pictures was going to be able to authorize Musk and Tesla's
26 exploitation of BR2049 in connection with the event, or otherwise that WBDI or
27 Warner Bros. Pictures could and would grant Tesla worldwide BR2049
28 exploitation rights to affiliate BR2049 with the cybercab during the event. Among

1 other BR2049 brand affiliation rights, Tesla and Musk asked WBDI (or one or
2 more Warner Bros. Pictures employees who were being actively managed and
3 directed by WBDI on event issues) for specific permission and rights to use the
4 Exhibit A Image. The specific Tesla employees, contractors or agents tasked with
5 executing on these issues included David Adametz (“Adametz”) (a video
6 production marketing executive at Tesla) and Shara Lili (“Lili”), a Manager of
7 Video Content for Tesla (also a video production marketing executive at Tesla).
8 One or both of Adametz and Lili were in direct contact with the WBDI executives
9 (or Warner Bros. executives acting under the direction of WBDI about event
10 issues) about the BR2049 brand affiliation, and one or both of Adametz and Lili
11 were also in direct or indirect contact with Musk about it, too.

12 91. Based on similarly-founded information and belief, and subject to the
13 need for discovery, Alcon further makes the allegations in this paragraph 91: At the
14 request of one or all of the Defendants (possibly made by Adametz or Lili on
15 behalf of Tesla and Musk), WBDI’s shared services rights clearance department
16 commenced clearance checks on the planned BR2049 brand inclusion in the
17 October 10, 2024 cybercab event.⁵ For reasons not yet fully known to Alcon,
18 WBDI’s shared services rights clearance department commenced (incorrectly) to
19 clear the use as only involving a need for a “clip license” (typically a relatively
20

21
22 ⁵ Shared services departments at Hollywood studios and their affiliated larger
23 corporate conglomerates have personnel (often legal, financial, accounting, or
24 human resources professionals) who may be ostensibly employed by, receive their
25 paychecks from, and have titles only with, a single corporate entity in the larger
26 conglomerate, but who in fact render services upon request or direction to a range of
27 entities within the conglomerate. Here, Plaintiff is informed and believes and on
28 that basis alleges that the WBDI shared services licensing department personnel
involved in this matter included an individual executive who is based in Burbank,
California and ostensibly an employee of Warner Bros. Pictures, but who on request
or direction renders licensing and clearance services to WBDI or on its behalf.

1 small dollar value and innocuous type of rights license and distinct from a brand
2 partnership or brand affiliation license), and only to the Exhibit A Image.

3 92. Alcon does not yet know all of what actually happened internally at
4 WBDI, or in WBDI communications with Musk and Tesla, as to why none of them
5 ever contacted Alcon about the larger brand affiliation proposal that was really
6 effectively at issue. Alcon is unlikely to know without litigation discovery.
7 However, Alcon does know at least the following three things: a) the magnitude
8 and nature of the cybercab event, and the contemplated BR2049 use in it, meant
9 that the issue was well beyond a mere “clip license,” but rather involved a more
10 substantive brand affiliation, requiring significant business discussions with Alcon
11 to proceed; b) none of the Defendants or anyone acting on their behalves ever made
12 any contact with any Alcon representative about the cybercab event prior to the
13 actual day of the event, not even for a “clip license”; and c) none of them ever
14 made any larger brand affiliation outreach to Alcon at all, even on the day of the
15 event. Instead, Alcon learned about Defendants’ interest in BR2049 on the day of
16 the event, only six hours prior to the event’s scheduled commencement, as follows:

17 93. Shortly after 12:00 p.m. PDT (noon) on October 10, 2024, the day of
18 the event, a WBDI shared services clip licensing executive based in Burbank and
19 engaged in the WBDI-Tesla-Musk BR2049 rights clearance process realized that
20 WBDI’s shared services licensing personnel could not ever clear the proposed
21 BR2049 cybercab event affiliation without reaching out to Alcon and/or Alcon’s
22 international distribution partner, including because the event required global
23 rights, not only domestic, since the event would be livestreamed globally. On
24 information and belief, the WBDI shared services clip licensing executive
25 communicated the problem directly or indirectly to WBDI executives and to
26 Tesla’s Adametz or Lili, informing them that either Alcon and/or Alcon’s
27 international distribution partner would have to grant permissions,
28 or the BR2049 affiliation could not occur, since international rights were involved.

1 94. The WBDI shared services clip licensing executive then sent an email
2 “heads up” to their counterpart at Alcon’s international distribution partner that
3 they might be getting an emergency rush basis BR2049 rights permission request
4 for “a Tesla even[t] happening today on our lot (sorry).” The shared services
5 licensing executive at Alcon’s international distribution partner communicated that
6 they would be unable to help without Alcon’s direct involvement, resulting in
7 contact finally being made with Alcon for the first time (just several hours before
8 the event’s scheduled commencement), by looping in an Alcon legal and business
9 affairs executive into a portion of the clearance communication chain.

10 95. In a resulting combination of telephonic and email communications
11 among a) Alcon’s legal department and b) the above-referenced two shared
12 services clip licensing executives at WBDI and Alcon’s international distribution
13 partner, Alcon sought further information about the proposed BR2049 rights
14 actually being requested. Although the information given was sparse, Alcon
15 learned enough information for Alcon’s co-CEOs to consider the proposal and
16 firmly reject it, which they did.

17 96. By no later than about 2:00 p.m. PDT on October 10, 2024, by a
18 combination of emails and telephone communications, Alcon’s legal and business
19 affairs executive communicated back to the WBDI shared services clip licensing
20 executive and the international distributor shared services clip licensing executive
21 that: a) Alcon refused all permissions for the October 10, 2024 WBDI-Tesla event;
22 b) Alcon was adamant that under no circumstances should there be any BR2049
23 affiliation, or any other Alcon affiliation, express or implied, with Tesla, X, Musk
24 or any Musk-owned company in the course of the October 10, 2024 event, or ever
25 (including a requirement to note Alcon’s position and directions in Warner Bros.
26 Pictures and WBDI databases); and c) the two shared services clip licensing
27 executives were to please relay both of these a) and b) messages back to WBDI,
28 Tesla and X, including so that there would be no mistakes in the conduct of the

1 event. Both of the shared services clip licensing executives reported back to Alcon
2 that they had communicated both messages as requested. Alcon is informed and
3 believes and thereon alleges that in fact they did. However, Alcon is further
4 informed and believes that the issue was then raised to a very high level within the
5 WBDI organization, essentially to the effect that Musk and Tesla were not getting
6 something that they want, and WBDI either effectively blessed Musk and Tesla to
7 incorporate BR2049 in the event anyway, and/or failed to take meaningful action to
8 stop them, although such action was available.

9 97. Alcon is thus informed and believes and thereon alleges that by no
10 later than about 2:00 p.m. PDT on October 10, 2024, WBDI, Tesla and X all knew
11 and understood that Alcon had not only refused any permissions to use any
12 BR2049 copyrighted elements in connection with the WBDI-Tesla event, but
13 Alcon had also expressly and clearly objected to any express or implied BR2049
14 affiliation with the event, or with Tesla, Tesla's cybercab, Musk, or X. However,
15 Alcon is also informed and believes and thereon alleges, subject to the need for
16 discovery, that by the issue being raised to the high level within WBDI and WBDI
17 either blessing Musk and Tesla to do it or not stopping them, Musk felt empowered
18 to do it anyway.

19 98. Musk was personally doing the event presentation and would have to
20 know what he was presenting and the parameters. Based on that reality and all the
21 circumstances known to Alcon so far, Alcon is informed and believes, and on that
22 basis and subject to the need for discovery, makes the allegations of this paragraph
23 98: At some point between about 2:00 p.m. PDT and the approximately 8:00 p.m.
24 PDT actual start time of the event on October 10, 2024, Musk personally became
25 aware of Alcon's permission denials and express objections (likely directly or
26 indirectly through Adametz or Lili). He thus personally knew and understood that
27 to incorporate BR2049 into the event presentation at all would be improper and an
28 unauthorized misappropriation of BR2049 goodwill. He did it anyway.

***Defendants' October 10, 2024 Intentional Copyright Infringement
and Brand Misappropriation***

99. The event was scheduled to begin at 7:00 p.m. PDT on October 10, 2024, but did not actually begin until about 8:00 p.m. PDT. In a brief introduction of a minute or less, a Tesla representative named “Franz” took the stage. Franz’s only substantive remark was to note that the presentation was being made from the Warner Bros. lot, the home of many science fiction films that show visions of the future (a clumsily transparent excuse to attach Tesla and the cybercab to Hollywood brands). Franz then quickly segued to saying that the event would involve Tesla showing a vision of the future, and who better than Musk to do it. The livestream then shifted to a combination of aerial shots and ground cameras showing a cybercab arriving at an on-lot theater, some distance away from the presentation stage building. Musk emerged from the theater and entered the cybercab after silently waving to a small crowd.

100. The livestream tracked the Musk-bearing cybercab from various camera vantage points as it autonomously slowly rolled him to the presentation stage building at another part of the lot. Musk exited and took the event stage. He spent about another minute on welcoming remarks and explaining that there were 20 cybercabs and another 30 fully autonomous and driverless Tesla Model Ys at the event that attendees would be able to take a ride in.

101. Then to commence the actual presentation, Musk said: “So you see a lot of sci-fi movies where the future is dark and dismal, where it’s not a future you want to be in.” As he said this, the event’s global livestream feed changed to a full screen display of a presentation slide with an image of the Earth from space at sunrise, with the words “What Kind of World Do We Want to Live In?” This first slide stayed on the full-screen livestream feed for less than two seconds.

102. Then, the livestream full screen display shifted to Musk’s second slide, which the livestream displayed for about 11 seconds. The second slide is an

1 image that looks (on a first initial visual read) like a motion picture still photo
2 (although it isn't) of a male figure seen from behind, with close-cropped hair,
3 wearing a trench coat or duster, standing in almost full silhouette as he surveys the
4 abandoned ruins of a city, all bathed in misty orange light. In the upper left corner
5 the words "Not This" appear superimposed on part of the orange sky. Exhibit C is
6 a screenshot of this second slide image from Musk's presentation ("Presentation
7 Slide 2 Image").

8 103. The Presentation Slide 2 Image (Exhibit C) was clearly intended to
9 read visually either as an actual still image from BR2049's iconic sequence of K
10 exploring the ruined Las Vegas, or as a minimally stylized copy of or illustration of
11 such a still image, or otherwise as an illustration of a scene from BR2049 and
12 specifically its Las Vegas Sequence. It does in fact objectively read like one or all
13 of these. From Alcon's examination, it seems likely to have been generated by: a)
14 copying the Exhibit A Image and the Exhibit B Images (or similar images from the
15 Picture's Las Vegas sequence), or even possibly the full BR2049 motion picture
16 work (or qualitatively significant portions thereof) in audiovisual form, into an AI
17 image generator, and b) then asking an AI image generation engine to make "an
18 image from the K surveying ruined Las Vegas sequence of 'Blade Runner 2049,'" or
19 some closely equivalent input direction. On information and belief, and subject
20 to the need for discovery, Alcon alleges that in fact this, or something closely akin
21 to it, is how the Presentation Slide 2 Image (Exhibit C) was generated, and for the
22 bad faith intentional purpose of affiliating BR2049 and its goodwill with Tesla's
23 cybercab, over Alcon's denial of permission and express objections. ("Exhibit C
24 AI Image Generation Alternative Theory 1".)

25 104. Alcon pleads the following alternative facts, on information and belief
26 and subject to the need for discovery, and subject to alternative pleading rules: The
27 Presentation Slide 2 Image was generated by Defendants or one of them first
28 selecting or otherwise obtaining what Defendants claim is an (unidentified)

1 “licensed image” as a background and then directing an AI image generator to add
2 “Elon Musk in a duster in the foreground,” or similar direction. On the same basis,
3 Alcon further alleges that the unidentified “licensed image” was itself created in
4 essentially the same way as described in Exhibit C AI Image Generation
5 Alternative Theory 1 (and that thus the underlying “licensed image” was itself
6 created by infringing Alcon’s copyright in BR2049). All on the same basis, Alcon
7 alleges that Defendants generated Exhibit C in this way for the bad faith intentional
8 purpose of affiliating BR2049 and its goodwill with Tesla’s cybercab, over Alcon’s
9 denial of permission and express objections. (“Exhibit C AI Image Generation
10 Alternative Theory 2”.)

11 105. On information and belief, and subject to the need for discovery,
12 Alcon makes the allegations in this paragraph 105: The Presentation Slide 2 Image
13 was generated in the above way or ways by an employee or agent of one or more of
14 WBDI, Tesla (possibly by Adametz or Lili), or even possibly by Musk himself, and
15 this was done with knowledge of the improper nature and purpose of the image
16 generation request. All of the Defendants participated in its creation, and in its
17 display in the presentation at the event, from a WBDI-owned building and studio
18 lot, on WBDI-owned video screens, and otherwise using WBDI-owned technology
19 infrastructure, operated by or in conjunction with Tesla employees, all acting in
20 whole or in part subject to the direction and control of Musk, at least during the
21 time of the event. Defendants all acted with the knowledge and understanding that
22 the X livestream or other equivalent video record of the event would be retweeted,
23 reposted, or otherwise picked up and redistributed tens of thousands or even
24 millions of times across the United States and the world immediately and
25 continuing for days after the event. In any event, all three of WBDI, Tesla and
26 Musk knew and understood the unauthorized nature of the image and the improper
27 purpose behind it, and encouraged or otherwise lent their support to the improper
28 endeavor. In the alternative, as to any and all Defendants who did not so actively

1 participate, such Defendants ratified the conduct and knowingly accepted the
2 benefits of it.

3 106. If there were any doubt that Defendants intended to evoke BR2049
4 with the Presentation Slide 2 Image, Musk erased them with his voiceover
5 comments during the approximately 11 seconds that the infringing Presentation 2
6 Image was completely filling the livestream screen. He said: “You know, I love
7 ‘Blade Runner,’ but I don’t know if we want that future. I believe we want that
8 duster he’s wearing, but not the, uh, not the bleak apocalypse.” The Presentation
9 Slide 2 Image then disappeared and Musk segued to talking about how what we all
10 should want is a happier looking future, and how happy and joyful his vision of
11 cities and highways filled with driverless robot cars will be and why.

12 107. Although Musk said the words “Blade Runner” without the year
13 number (without “2049”), he clearly specifically meant to evoke BR2049 rather
14 than the original 1982 Picture, and he was motivated to do so. The two films are
15 clearly related, but BR2049 has its own distinct brand and secondary meaning, and
16 BR2049’s specific goodwill is far more relevant to Tesla’s and Musk’s cybercab
17 pitch and product.

18 108. Although the 1982 Picture does prominently feature flying car
19 “spinners,” the cars in the 1982 Picture are not shown to be wholly or even
20 partially autonomous, or even shown to employ artificial intelligence themselves in
21 any way. None of the cars in the 1982 Picture play any role as a quasi-sentient
22 companion to the Deckard lead character in the 1982 Picture, like K’s spinner does
23 for K in BR2049. Pointedly, then, if you are a company (or own one) specifically
24 trying to market artificially intelligent, wholly or partially autonomous self-driving
25 cars (as Tesla and Musk are), the 1982 Picture has little or no specifically relevant
26 context. In contrast, BR2049 has extremely relevant context and worldwide
27 goodwill in precisely the areas of artificial intelligence, self-driving capability, and
28 autonomous automotive capability that Tesla and Musk are trying to market.

1 109. Musk did successfully evoke BR2049 specifically, including to
2 consumers and potential car maker and car brand customers of Alcon, and that is
3 true even though Musk only said the words “Blade Runner” without adding the
4 year “2049.” For the reasons detailed in the next paragraphs below, Musk’s act of
5 displaying the Exhibit C Image -- an image of a man in near-silhouette, with close-
6 cropped hair and wearing a duster, while he surveys an orange-light-bathed ruined
7 and abandoned cityscape -- and displaying it for 11 seconds while Musk talks
8 about “Blade Runner” and a specifically “apocalyptic” future – that is all
9 specifically evocative of BR2049, and not of the 1982 Picture.

10 110. While both the 1982 Picture and BR2049 show dystopian urban
11 futures, only BR2049 has a specifically apocalyptic setting. Only BR2049 has an
12 abandoned and ruined city (Las Vegas) that has suffered an event of extreme
13 destruction (the detonation by terrorists of a dirty nuclear device). The ruined Las
14 Vegas is where the most dramatically charged events of the BR2049 story take
15 place (K’s encounter with the long-lost Deckard). The setting has striking color
16 design, cinematography and other visual elements: it is distinctly bathed in
17 “apocalyptic” misty orange light, just like the Presentation Slide 2 Image and
18 which the 1982 Picture does not have in any comparable scene. Throughout
19 BR2049, there also are general references and story elements about civilization
20 having semi-recently suffered a broader, apocalyptic nuclear conflict in the mid-
21 range past, including electromagnetic pulse activity that destroyed many electronic
22 records, making investigation of the past difficult.

23 111. In contrast, the 1982 Picture is set in a dystopian urban landscape of a
24 then-futuristic 2019 Los Angeles, but the 1982 Picture’s setting is specifically not
25 apocalyptic. In the 1982 Picture, there has not been any dirty nuclear device, or
26 nuclear electromagnetic burst which destroyed electronic records, or other
27 apocalyptic destruction that has hit Los Angeles or Las Vegas or any other
28 location. If anything, the urban setting of the 1982 Picture is the opposite of

1 abandoned and ruined: it is overrun with too much ongoing industry and suffering
2 from overpopulation. It is not a stark, lonely, misty, orange, dry, radiated desert
3 ruin like BR2049's Las Vegas or the Presentation Slide 2 Image, but rather is an
4 overcrowded neon urban prison, where the citizens are trapped in constant night
5 plagued by perpetual rain and an ever-present bombardment of consumer
6 advertising. In the 1982 Picture, neither the main character nor anyone else ever
7 goes to any orange-colored post-apocalyptic ruined city or any other such location,
8 in a duster or otherwise. Further, while in BR2049, Deckard is (or was) a "blade
9 runner" who appears in the Picture's Las Vegas Sequence setting, he never wears a
10 duster in BR2049 at all: Musk's voiceover reference to a blade runner wearing a
11 duster in a post-apocalyptic setting while directing the audience to the Presentation
12 Slide 2 Image/Exhibit C, can only be a reference to K (not Deckard).

13 112. Musk thus very clearly meant specifically to evoke to the audience
14 including actual and potential purchasers and the consuming public, not the 1982
15 Picture, but rather BR2049 and everything that goes with it -- including artificially
16 intelligent autonomous cars like the Tesla cybercab being pitched at the event. He
17 successfully did.

18 113. Any argument that Musk and his co-Defendants only meant to talk
19 broadly about the general idea of science fiction films and undesirable apocalyptic
20 futures and juxtaposing them with Musk's ostensibly happier robot car future
21 vision, and that they just used BR2049 by chance, without conscious awareness of
22 and intent to appropriate BR2049's special secondary meaning in the context of
23 trying to sell artificially autonomous cars, is not credible.

24 114. First, as detailed in foregoing paragraphs, there is a clear record that
25 WBDI and Tesla were specifically interested in BR2049, as late as mere hours
26 before the event, and not just any BR2049 Image, but the Exhibit A Image
27 prominently featuring K's artificially intelligent autonomously capable spinner.

28 ///

1 115. Second, if Musk by his presentation was only trying to use an
2 exemplary science fiction movie to make a rhetorical point, there were much better
3 choices actually in the WBDI library (or the library of WBDI's subsidiary, Warner
4 Bros.) for Musk to reference, given what his point ostensibly was. Musk's
5 ostensible point was "science fiction film futures look bleak and not thinking
6 enough about transportation technology risks that kind of apocalyptic future; I can
7 help us do better with my cybercabs, but you must actively choose to do that and
8 take action about it." If that was really the only point he was trying to make and
9 his only aim, there are better films actually in the WBDI library (or the library of
10 WBDI's subsidiary, Warner Bros.) to make that point and hit that mark.

11 116. Every single one of the five "Mad Max" movies in WBDI's (or its
12 subsidiary Warner Bros.'s) motion picture library ("Mad Max," "The Road
13 Warrior," "Mad Max Beyond Thunderdome," "Fury Road," and "Furiosa: A Mad
14 Max Saga") deals far more specifically than BR2049 with that ostensible message.
15 Every one of the Mad Max movies is set in an apocalyptic future where gas-
16 powered, non-autonomous vehicles not only played a part in bringing about
17 civilization's end (wars over oil), but where gasoline and gas-powered non-
18 autonomous cars continue to be what the remaining humans fight with and about in
19 the post-apocalyptic wasteland. Any of those "Mad Max" movies in the WBDI
20 library (or the library of WBDI's subsidiary, Warner Bros.) thus would have made
21 much more sense to use, if the true purpose of referencing a specific film was to
22 make a rhetorical point.

23 117. The entire opening and its forced references to science fiction films
24 generally was never really for Musk to make a rhetorical point, though. Franz's
25 and Musk's Hollywood film rhetoric was just a contrivance for something else
26 more economically valuable to the Defendants. The WBDI lot location, and
27 especially the strained science fiction film references, were all clearly an
28 intentional effort to affiliate Tesla and its cybercab with Hollywood brands, and at

1 a time when Musk and Tesla are on the outs with Hollywood creatives and brands.
2 It was all about appropriating desirable Hollywood associations, and if possible,
3 Hollywood associations with special resonance to artificial intelligence and
4 strikingly-designed autonomous cars.

5 118. The “Mad Max” movies are great, and so are many other dystopian-
6 future or apocalyptic-future movies actually in WBDI’s library (or the library of
7 WBDI’s subsidiary Warner Bros. Pictures). But those movies don’t have massive
8 consumer goodwill specifically around really cool-looking (Academy Award-
9 winning) artificially intelligent, autonomous cars. BR2049 does. It was the best
10 and most relevant film brand for Tesla to appropriate, or one of the best.

11 119. The art of advertising is at least partially about choosing expressive
12 levers that will quickly and effectively move the audience emotionally,
13 psychologically, and/or intellectually into a state where the seller can more easily
14 influence them to do the thing or things the seller wants them to do. For example,
15 in the Honda Del Sol car advertisements that were the subject of *Metro-Goldwyn-*
16 *Mayer, Inc. v. American Honda Motor Co., Inc.*, 900 F.Supp. 1287 (C.D. Cal.
17 1995), Honda evoked MGM’s James Bond character and other elements of the
18 James Bond movies, because by doing so, Honda moved the Del Sol into a well-
19 developed world of glamor, adventure, sex and danger – James Bond’s world. The
20 message Honda was going for seems likely to have been something like, “by a
21 Honda Del Sol and your life will be more exciting.” Honda could have just said
22 that. But, it was likely more effective and much more nuanced, and sending many
23 more channels of messaging, to appropriate elements of James Bond – a property
24 someone else had already spent huge resources to develop and maintain.

25 120. Here, especially when the entire context of the “We Robot”
26 presentation is considered, part of Musk’s and Tesla’s goal was to try to convince
27 the audience at the outset of the presentation that the decision that the presentation
28 was going to put to them (whether or not to buy or bet on Musk’s and Tesla’s

1 artificially intelligent car products) was urgent and critical to the future of joint
2 human/AI civilization. Musk also wanted to instill a mood not only of curiosity,
3 but also of fear, anxiety and urgency. He also wanted strongly to suggest that there
4 are right and wrong answers to the question, leading to good futures and bad
5 futures (and that doing what Musk wants leads to the good futures).

6 121. None of those themes or moods are themselves protectable by any
7 intellectual property law. But what Musk did was use the lever of BR2049's
8 protectable elements as Musk's specific vehicle of expression to communicate
9 those themes and moods, to move his audience into the emotional space Musk
10 wanted the audience to be in for the presentation. Whether or not Musk intended
11 that, it was the objective effect. That infringed Alcon's copyright in the Picture.

12 122. Defendants' conduct also violated the Lanham Act, creating actual
13 confusion or a likelihood of it in the relevant marketplaces, about BR2049
14 branding, including Alcon's marketing efforts with potential auto brand partners on
15 the *Blade Runner 2099* television series, among other marketplace confusion and
16 brand damage. Alcon needs relief.

17 **FIRST CLAIM FOR RELIEF**

18 ***Direct Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.***

19 ***Against Defendants WBDI, Tesla and Musk***

20 123. Plaintiff repeats, re-alleges and incorporates herein by reference each
21 and every allegation set forth in all of the foregoing paragraphs, and in each
22 paragraph of this Complaint hereafter, as if set forth herein in full.

23 124. To the extent any of the allegations or theories in this First Claim for
24 Relief are inconsistent with other allegations or theories pled in this Complaint,
25 they are pled in the alternative.

26 125. Plaintiff is the author and copyright owner of the motion picture
27 "Blade Runner 2049," registered with the United States Copyright Office on

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1 October 6, 2017, registration number PA0002056792. That is the registered
2 infringed work.

3 126. Defendants Tesla and Musk created at least two infringing works: 1)
4 Exhibit C/Presentation Slide 2; and 2) the recorded October 10, 2024 “We Robot”
5 presentation (a copy of which recording is in the record of the action as Exhibit 2 to
6 the February 4, 2025 Omnibus Declaration of Chris Marchese) (“We Robot
7 Work”). The specifically infringing portions of the We Robot Work are the
8 approximately 11 seconds at the opening of the presentation where the Exhibit
9 C/Presentation Slide 2 is displayed and Musk’s accompanying voiceover.

10 127. Defendant Tesla and Musk are direct infringers, in that they violated
11 Plaintiff’s exclusive rights in BR2049 in each of the following ways, with the
12 conduct alleged constituting both actual copying and unlawful appropriation in each
13 instance. Defendant WBDI is a direct infringer in that the violation of Alcon’s
14 public display rights as alleged in this FAC and paragraph 127f below was
15 conducted on, and transmitted over, WBDI-owned or WBDI-controlled property,
16 infrastructure and systems (specifically including WBDI livestreaming
17 infrastructure systems):

18 a. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants
19 Musk and Tesla infringed this exclusive right of Alcon by the conduct
20 alleged in paragraph 103 in this FAC: literal copying of the entirety of
21 BR2049 or of protectable elements of BR2049 such as still images like
22 those in Exhibits A and B, or a partial videorecording of BR2049, to an
23 AI image generator. These allegations are made on the same
24 information and belief and alternative pleading theory basis as set forth
25 in paragraph 103.

26 b. Violation of Reproduction Right, 17 U.S.C. § 106(1). Defendants
27 Musk and Tesla infringed this exclusive right of Alcon by the conduct
28 alleged in paragraph 104 in this FAC: literal copying of an

1 unauthorized derivative work (the allegedly “licensed image”
2 referenced in Exhibit C AI Image Generation Alternative Theory 2),
3 which itself was generated by literal copying of the entirety of BR2049
4 or of protectable elements of BR2049 such as still images like those in
5 Exhibits A and B, or a partial videorecording of BR2049, to an AI
6 image generator. These allegations are made on the same information
7 and belief and alternative pleading theory basis as set forth in paragraph
8 104.

9 c. Violation of Reproduction Right, 17 U.S.C. § 106(1). Under the law of
10 the Ninth Circuit as usually interpreted, all of the violations of Alcon’s
11 right to prepare derivative works are also necessarily violations of
12 Alcon’s reproduction rights.

13 d. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).
14 The Exhibit C/Presentation Slide 2 Image is an unauthorized derivative
15 work of BR2049, which impermissibly incorporates at least the
16 following protected elements of BR2049 (as the protected elements are
17 detailed in paragraph 71 of this FAC): i) the character K; ii) Urgent
18 Human-AI Decision Point Theme; iii) Mood of Anxiety, Fear and
19 Urgency, and specifically about the Human-AI Decision Point; iv)
20 Setting as alleged in paragraph 71e of this FAC; and v) Combination of
21 Elements, as alleged in paragraph 71f of this FAC. See paragraphs 99-
22 121 of this FAC. Alcon further alleges that the Exhibit C/Presentation
23 Slide 2 Image must be treated as an unauthorized derivative work,
24 because Musk by his commentary during the We Robot event and in
25 the We Robot Work effectively represents to the audience that it is
26 either itself a protected still image of BR2049, or a derivative work of
27 BR2049, and that Defendants should therefore be estopped to contend
28 otherwise. *Id.*

1 e. Violation of Right to Prepare Derivative Works, 17 U.S.C. § 106(2).

2 The We Robot Work is an unauthorized derivative work of BR2049,
3 which impermissibly incorporates at least the following protected
4 elements of BR2049 (as the protected elements are detailed in
5 paragraph 71 of this FAC): i) the character K; ii) Urgent Human-AI
6 Decision Point Theme; iii) Mood of Anxiety, Fear and Urgency, and
7 specifically about the Human-AI Decision Point; iv) Setting as alleged
8 in paragraph 71e of this FAC; and v) Combination of Elements, as
9 alleged in paragraph 71f of this FAC; and vi) incorporation of Exhibit
10 C/Presentation Slide 2 into the work. See paragraphs 99-121 of this
11 FAC. Alcon further alleges that the We Robot Work must be treated as
12 an unauthorized derivative work, because Musk by his commentary
13 during the We Robot event and in the We Robot Work effectively
14 represents to the audience that the Exhibit C/Presentation Slide 2 Image
15 incorporated into the We Robot Work is either itself a protected still
16 image of BR2049, or a derivative work of BR2049, and that
17 Defendants should therefore be estopped to contend otherwise. *Id.*

18 f. Violation of Right to Display Work Publicly, 17 U.S.C. § 106(5). The
19 display of Exhibit C/Presentation Slide 2 Image at the live We Robot
20 Event and during the livestream of the event in the United States
21 violated Alcon's public display rights in BR2049 and its protected
22 elements, and all three Defendants have direct infringement liability.
23 Musk and Tesla actively conducted the event resulting in the display,
24 paragraphs 99-121, and the display occurred over WBDI-owned or -
25 controlled systems, *see* paragraph 105.

26 128. Alcon alleges and contends that where substantial similarity analysis is
27 required, Defendants' acts of infringement above as to the character K are subject to
28 the "story being told," distinct delineation, and/or bodily appropriation tests

1 applicable to characters, and that the character K satisfies them. Alcon further
2 alleges and contends that the element of Setting as described in paragraph 71e is an
3 original location that is also subject to, or should be subject to, these same tests, and
4 that the Setting as described in paragraph 71e satisfies them. *See, e.g.*, K. Wright,
5 Note, “Blueprints of Character: Applying the Distinct Delineation Test and
6 Character Copyright Protection to Original Literary Places,” 43 AIPLA Q.J. 221
7 (Winter 2015).

8 129. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
9 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
10 create derivative works, display, distribute and publicly perform BR2049 and its
11 protectible elements. Such actions and conduct constitute copyright infringement in
12 violation of 17 U.S.C. § 501, *et seq.*

13 130. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
14 registered the exclusive rights and privileges in and to the copyrights of the above-
15 referenced work in accordance with 17 U.S.C. § 408.

16 131. Plaintiff suffered damages as a result of Defendants’ unauthorized use
17 of BR2049 and its protectible elements.

18 132. Plaintiff is entitled to temporary, preliminary and/or permanent
19 injunctive relief, pursuant to 17 U.S.C. § 502(a).

20 133. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to
21 impoundment of all materials used to achieve the infringement, and records
22 documenting Defendants’ exploitation of their infringements, including without
23 limitation all materials used by Defendants or any image generation tool employed
24 by them to generate the Presentation Slide 2 Image.

25 134. Plaintiff is entitled to recover and seeks its actual damages and any
26 additional profits of Defendants WBDI, Tesla and Musk attributable to the
27 infringements, under 17 U.S.C. § 504(b).

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1 135. Plaintiff also is entitled to elect to recover and seek statutory damages
2 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more than
3 \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
4 believes and on that basis alleges that Defendants' acts of copyright infringement, as
5 alleged above, were willful, intentional, and malicious. Such acts subject
6 Defendants to liability for statutory damages under Section 504(c)(2) of the
7 Copyright Act in the sum of up to \$150,000 per infringement.

8 136. Within the time permitted by law, Plaintiff will make its election
9 between actual damages and profit disgorgement, or statutory damages.

10 137. Plaintiff also is entitled to a discretionary award of attorney fees under
11 17 U.S.C. § 505.

12 138. Plaintiff seeks or reserves the right to seek any or all of the above forms
13 of relief, in addition to prejudgment interest to the extent legally available and
14 Plaintiff's costs.

15 **SECOND CLAIM FOR RELIEF**

16 ***Vicarious Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.***

17 ***Against Defendants WBDI, Tesla and Musk***

18 139. Plaintiff repeats, re-alleges and incorporates herein by reference each
19 and every allegation set forth in all of the foregoing paragraphs, and each
20 paragraph of this Complaint hereafter, as if set forth herein in full.

21 140. To the extent any of the allegations or theories in this Second Claim
22 for Relief are inconsistent with other allegations or theories pled in this Complaint,
23 they are pled in the alternative.

24 141. If Defendants WBDI, Tesla and Musk are not each liable as direct
25 infringers of BR2049, they are secondarily liable for the infringements directly
26 committed by individual agents, contractors, or other infringers presently unknown
27 (the "Direct Infringers") under the vicarious infringement doctrine.

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1 142. Defendants WBDI, Tesla and Musk had the right and ability to
2 supervise the infringing activity that all the Direct Infringers committed. The facts
3 and circumstances of the event make clear that at the very least Tesla and Musk
4 could have refrained from creating Exhibit C/Presentation Slide 2 Image or
5 including it in the We Robot Presentation or told their agents, employees or
6 contractors not to include it. Defendant WBDI was using its shared services
7 licensing department to perform clearance work for the presentation at least related
8 to film references. Plaintiff is thus informed and believes and on that basis, and
9 subject to the need for discovery, alleges that WBDI had the right and ability to tell
10 the Direct Infringers that their infringing conduct was not acceptable and could not
11 be part of the presentation. Plaintiff is specifically informed and believes and
12 thereon alleges that the issue of whether or not Musk and Tesla should be allowed
13 to use any aspect of the BR2049 property in the event and whether WBDI should
14 do anything to stop them from doing so was raised internally at WBDI to a very
15 high level WBDI executive, such that WBDI was actively aware of the issue, and
16 did nothing to stop it. To the extent that the Direct Infringers were individual
17 agents, employees or contractors of WBDI, or of one or more subsidiaries of
18 WBDI over which WBDI exercised actual or practical control, then WBDI plainly
19 had the right and ability to supervise the Direct Infringers' infringing conduct.

20 143. Defendants obtained some direct financial benefit from the
21 infringement of Plaintiff's rights in BR2049 by the Direct Infringers.

22 144. With respect to Musk and Tesla, the Direct Infringements allowed the
23 inclusion of the 11 seconds of infringing material in the We Robot presentation and
24 We Robot Work, and featured sufficiently prominently in the We Robot
25 presentation, and still does in the We Robot Work, that it constitutes part of the
26 draw intentionally being used by Musk and Tesla to sell cars and the Company. In
27 that regard, Plaintiff incorporates the allegations of the FAC's paragraphs 8-13, 44-
28 47, 93-98 and 104-121.

1 145. Plaintiff further alleges that Musk similarly believed that the BR2049
2 reference and affiliation would increase consumer interest in Tesla cybercabs, and
3 that Tesla would sell more of them or experience more pre-orders for them. Musk is
4 not only the largest shareholder in Tesla, but his compensation as CEO is directly
5 tied to the Tesla stock price, as a substantial portion of Musk's compensation is
6 grants of equity in Tesla. Musk thus believed he would directly benefit financially
7 from the infringement.

8 146. As for WBDI, Plaintiff is informed and believes and on that basis
9 alleges, subject to the need for discovery, whether it was a formal brand affiliation
10 right built into the WBDI-Tesla event agreement contract(s) or not, Musk and
11 Tesla's belief that they would be able to use one or more Hollywood motion picture
12 properties in the library of WBDI's subsidiary Warner Bros., at no extra meaningful
13 charge, was part of the draw for Musk and Tesla to agree to make the payments that
14 Tesla contracted to make to WBDI for the event. Further, Plaintiff is informed and
15 believes and on that basis, and subject to the need for discovery, alleges that Musk
16 and Tesla (inaccurately) believed that one of the motion pictures they could use in
17 this way and that WBDI could cause to be provided in this way, and indeed the one
18 which they saw as the most desirable, was BR2049. Based on past actual brand
19 affiliation contracts for automotive partners on BR2049, Tesla likely would have
20 had to make significant expenditures – at least in the mid-six-figures (at least
21 \$500,000) and possibly into the eight figures (\$10 million or more) to obtain a
22 BR2049 brand affiliation with Tesla and the cybercab at market value, if Alcon had
23 even been willing to do it at all. Thus, that Musk and Tesla believed that they were
24 going to get it essentially for free, as a throw-in to the event agreement, was a draw
25 to Musk and Tesla for the money that they agreed to pay to WBDI for the event.

26 147. With respect to WBDI, further and similarly, Plaintiff is informed and
27 believes and on that basis, and subject to the need for discovery, alleges that the
28 event contract between WBDI and Tesla, included either a formal or informal co-

1 promotional or brand affiliation element, and that prior to October 10, 2024, Tesla
2 and Musk believed and relied on (inaccurately) that WBDI could deliver a brand
3 affiliation with BR2049. Plaintiff is informed and believes and on that basis, and
4 subject to the need for discovery, alleges that when Tesla and Musk learned that was
5 not true or not the same situation as they had believed, WBDI had a financial
6 incentive to avoid any claims of breach of contract or adjustment of the contract
7 price, and one way to do that was essentially to allow the fudging (questionable
8 manipulation) of the situation by either suggesting, encouraging, or knowingly
9 allowing Tesla and Musk's generation of and use of and conduct of the Exhibit
10 C/Presentation Slide 2 Image and 11 infringing seconds of the We Robot
11 presentation.

12 148. Accordingly, all Defendants had an incentive to permit infringement by
13 the Direct Infringers.

14 149. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
15 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
16 create derivative works, and publicly display BR2049 and its protectible elements.
17 Such actions and conduct constitute copyright infringement in violation of 17 U.S.C.
18 § 501, *et seq.*

19 150. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
20 registered the exclusive rights and privileges in and to the copyrights of the above-
21 referenced work in accordance with 17 U.S.C. § 408.

22 151. Plaintiff suffered damages as a result of Defendants' unauthorized use
23 of BR2049 and its protectible elements.

24 152. Plaintiff is entitled to temporary, preliminary and/or permanent
25 injunctive relief, pursuant to 17 U.S.C. § 502(a).

26 153. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to
27 impoundment of all materials used to achieve and records documenting Defendants'
28 exploitation of, their infringements, including without limitation all materials used

1 by Defendants or any image generation tool employed by them to generate the
2 Presentation Slide 2 Image.

3 154. Plaintiff is entitled to recover and seeks its actual damages and any
4 additional profits of Defendants WBDI, Tesla and Musk attributable to the
5 infringements, under 17 U.S.C. § 504(b).

6 155. Plaintiff also is entitled to elect to recover and seeks statutory damages
7 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more than
8 \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
9 believes and on that basis alleges that Defendants' acts of copyright infringement, as
10 alleged above, were willful, intentional, and malicious. Such acts subject
11 Defendants to liability for statutory damages under Section 504(c)(2) of the
12 Copyright Act in the sum of up to \$150,000 per infringement.

13 156. Within the time permitted by law, plaintiff will make its election
14 between actual damages and profit disgorgement, or statutory damages.

15 157. Plaintiff also is entitled to a discretionary award of attorney fees under
16 17 U.S.C. § 505.

17 158. Plaintiff seeks or reserves the right to seek any or all of the above forms
18 of relief, in addition to prejudgment interest to the extent legally available and
19 Plaintiff's costs.

20 **THIRD CLAIM FOR RELIEF**

21 ***Contributory Copyright Infringement in Violation of 17 U.S.C. § 501, et seq.***

22 ***Against Defendants WBDI, Tesla and Musk***

23 159. Plaintiff repeats, re-alleges and incorporates herein by reference each
24 and every allegation set forth in all of the foregoing paragraphs, and each
25 paragraph of this Complaint hereafter, as if set forth herein in full.

26 160. To the extent any of the allegations or theories in this Third Claim for
27 Relief are inconsistent with other allegations or theories pled in this Complaint,
28 they are pled in the alternative.

1 161. If Defendants WBDI, Tesla and Musk are not individually liable as
2 direct infringers of BR2049, they are secondarily liable for the infringements
3 committed by the Direct Infringers under the contributory infringement doctrine.

4 162. Defendants WBDI, Tesla and Musk had, or should have had,
5 knowledge of the infringements of the Direct Infringers. Tesla and Musk plainly
6 intentionally included the Exhibit C/Presentation Slide 2 Image in the October 10,
7 2024 Tesla presentation, and they could plainly see that it was not an actual still
8 image from BR2049, but rather a stylized copy likely to found infringing. They
9 also all knew that Alcon had refused permission to use BR2049 or any of its
10 elements in the presentation or in connection with it. Defendant WBDI was using
11 its shared services licensing department to perform clearance work for the
12 presentation at least related to motion picture references. Plaintiff is informed and
13 believes and on that basis and subject to the need for discovery alleges that if
14 WBDI or its personnel were not Direct Infringers, WBDI's shared services
15 licensing clearance department was at least being shown image options, including
16 viewing the proposed Exhibit C/Presentation Slide 2 Image in advance of the event,
17 and thus knew about the infringement.

18 163. Defendants WBDI, Tesla and Musk either materially contributed to or
19 induced the infringements. Tesla and Musk materially contributed to the direct
20 infringements by including the Exhibit C/Presentation Slide 2 in Musk's
21 presentation. Plaintiff is informed and believes and on that basis and subject to the
22 need for discovery alleges that Musk was determined specifically to reference
23 BR2049 and an image from it in the presentation, and his determination induced
24 the direct infringements by the Direct Infringers of creating the infringing
25 Presentation Slide 2 Image. Defendant WBDI materially contributed to the direct
26 infringements at the very least in that the event display, distribution and public
27 performance aspects of the infringement occurred at WBDI's Burbank, California
28 studio lot, and with the use and support of WBDI's facilities and technology.

1 Plaintiff is informed and believes and on that basis, and subject to the need for
2 discovery, alleges that WBDI induced the infringement by convincing or
3 encouraging the Direct Infringers and Tesla and Musk that Alcon's denial of any
4 BR2049 permissions could be circumvented by generation and use of an AI-
5 generated copy of iconic BR2049 imagery, as Alcon alleges the Presentation Slide
6 2 Image to be.

7 164. The foregoing acts of Defendants WBDI, Tesla and Musk infringed
8 upon the exclusive rights granted to Alcon under 17 U.S.C. § 106 to reproduce,
9 create derivative works, display, distribute and publicly perform BR2049 and its
10 protectible elements. Such actions and conduct constitute copyright infringement in
11 violation of 17 U.S.C. § 501, *et seq.*

12 165. Plaintiff has complied with 17 U.S.C. §§ 101, *et seq.* and secured and
13 registered the exclusive rights and privileges in and to the copyrights of the above-
14 referenced work in accordance with 17 U.S.C. § 408.

15 166. Plaintiff suffered damages as a result of Defendants' unauthorized use
16 of BR2049 and its protectible elements.

17 167. Plaintiff is entitled to temporary, preliminary and/or permanent
18 injunctive relief, pursuant to 17 U.S.C. § 502(a).

19 168. Pursuant to 17 U.S.C. § 503 and its subdivisions, Plaintiff is entitled to
20 impoundment of all materials used to achieve and records documenting Defendants'
21 exploitation of, their infringements, including without limitation all materials used
22 by Defendants or any image generation tool employed by them to generate the
23 Presentation Slide 2 Image.

24 169. Plaintiff is entitled to recover and seeks its actual damages and any
25 additional profits of Defendants WBDI, Tesla and Musk attributable to the
26 infringements, under 17 U.S.C. § 504(b).

27 170. Plaintiff also is entitled to elect to recover and seeks statutory damages
28 under 17 U.S.C. §§ 512 and 504(c), in an amount of not less than \$750 or more than

1 \$30,000 per infringement of BR2049. Furthermore, Plaintiff is informed and
2 believes and on that basis alleges that Defendants' acts of copyright infringement, as
3 alleged above, were willful, intentional, and malicious. Such acts subject
4 Defendants to liability for statutory damages under Section 504(c)(2) of the
5 Copyright Act in the sum of up to \$150,000 per infringement.

6 171. Within the time permitted by law, Plaintiff will make its election
7 between actual damages and profit disgorgement, or statutory damages.

8 172. Plaintiff also is entitled to a discretionary award of attorney fees under
9 17 U.S.C. § 505.

10 173. Plaintiff seeks or reserves the right to seek any or all of the above
11 forms of relief, in addition to prejudgment interest to the event legally available
12 and Plaintiff's costs.

13 **FOURTH CLAIM FOR RELIEF**

14 ***False Affiliation and/or False Endorsement***

15 ***in Violation of 15 U.S.C. § 1125(a)(1)(A) against All Defendants***

16 174. Plaintiff repeats, re-alleges and incorporates herein by reference each
17 and every allegation set forth in all of the foregoing paragraphs, and each
18 paragraph of this Complaint hereafter, as if set forth herein in full.

19 175. To the extent any of the allegations or theories in this Fourth Claim for
20 Relief are inconsistent with other allegations or theories pled in this Complaint,
21 they are pled in the alternative.

22 176. Alcon owns the marks, trade dress and other Lanham Act-protectable
23 interests identified in paragraphs 73-84 (together, "Alcon's Marks"), and has
24 owned since prior to 2024.

25 177. Defendants Tesla and Musk have engaged in false representations
26 which are likely to cause confusion, or to cause mistake, or to deceive as to the
27 affiliation, connection or association of Tesla and Musk with Alcon or as to the
28 sponsorship or approval of Tesla's or Musk's goods, services, or commercial

1 activities by Alcon.

2 178. Plaintiff alleges that Tesla and Musk engaged in the following specific
3 conduct that together constituted false statements that constituted false
4 representations of the type described in the foregoing paragraph 177: the conduct
5 and statements made by Tesla and Musk at the October 10, 2024 Tesla-WBDI
6 event as described in paragraphs 85-122 above, and as further distributed and made
7 available to consumers thereafter by the wide dissemination to and ongoing
8 presence and availability of, the We Robot Work to consumers.

9 179. As alleged in detail in paragraphs 85-122 above, in the about eleven
10 seconds of We Robot presentation on October 10, 2024 which included the Exhibit
11 C/Presentation Slide 2 Image and Musk's accompanying voiceover, Musk and
12 Tesla by their conduct used or evoked all of the following protectable Lanham Act
13 interest of Alcon: a) Alcon's BLADE RUNNER 2049 mark as it is described in
14 paragraph 73; b) Alcon's mark or protectable goodwill in the character K; c)
15 Alcon's protectable trade dress in iconic or recognizable still images from BR2049
16 such as Exhibit A and the Exhibit B images, specifically generating the Exhibit
17 C/Presentation Slide 2 Image and displaying it with accompanying voiceover by
18 Musk such that it appeared to be either an actual still image from BR2049's Las
19 Vegas Sequence, or a lightly-stylized illustration of K about to enter the irradiated
20 Las Vegas at or near the beginning of the sequence; and d) a protectable
21 combination as alleged in paragraph 76.

22 180. Pointedly, Alcon's Lanham Act claim is not that Tesla and Musk were
23 using Alcon's marks to market or sell BR2049 itself (reverse passing off), or even
24 that Tesla and Musk violated the Lanham Act just by using a faked still image or
25 faked BR2049 illustration which they held out as an actual BR2049 still image or
26 licensed illustration (passing off, which they did do, also). Rather, the Lanham Act
27 claim is centered around that Musk and Tesla used Alcon's marks and trade dress
28 to advertise cars and a car company. The We Robot presentation was for all intents

1 and purposes a long livestreamed advertisement for Tesla and its products, and it
2 reached a substantial set of the general consuming public in the United States, and
3 of Alcon's potential auto brand partners on BR2049. Alcon is in fact in that
4 business of licensing the BR2049 marks and trade dress to car makers for
5 advertising affiliation.

6 181. Tesla's and Musk's unauthorized use of, and references, to Alcon's
7 BR2049 marks and secondary meaning elements had and have the effect of falsely
8 representing that Tesla's and Musk's goods and services are licensed, sponsored,
9 endorsed, or otherwise authorized by Alcon, and/or is at the very least misleading
10 as to these points, and in a business market (auto brand marketing partnerships on
11 BR2049) in which Alcon is actually an established player.

12 182. Tesla's and Musk's conduct is likely to cause confusion or mistake
13 and to deceive consumers and/or Alcon's relevant actual and potential business
14 partners as to the endorsement, sponsorship, affiliation, connection, or association
15 of Alcon with Tesla's and Musk's services and products. In this context, Alcon's
16 relevant business partners include automotive brands with potential interest in
17 brand affiliations with BR2049, including without limitation with the BR2049-
18 based *Blade Runner 2099* television series currently in production by Alcon. They
19 also include business partners in the Hollywood talent pool market where Alcon is
20 active on an everyday basis, and which Hollywood talent pool market generally is
21 less likely to deal with Alcon, or parts of the market may be, if they believe or are
22 confused as to whether, Alcon has an affiliation with Tesla or Musk.

23 183. Tesla and Musk engaged in the above conduct intentionally and in bad
24 faith, conspiring to and then executing a fraudulent scheme falsely to create a
25 purported justification or excuse to feature Alcon's BR2049 prominently at the
26 outset of Tesla's and Musk's cybercab product reveal presentation, and without
27 paying Alcon any fee for doing so, for the purpose of using BR2049's goodwill to
28 increase the interest level and cache of the new Tesla product pitch and product.

1 184. All of the foregoing false endorsement uses of Alcon's BR2049 marks
2 and goodwill were commercial speech, and not subject to any defense predicated
3 on the nature of the use being a non-commercial use or non-commercial speech.
4 Specifically, some or all of Tesla's and Musk's speech was either (a) core
5 commercial speech in that it proposes a commercial transaction, or in the
6 alternative, (b) was nonetheless commercial for purposes of false endorsement law
7 and Plaintiff's claims herein, in that the communications were advertisements,
8 made reference to a specific product, and the speaker had an economic motivation
9 for the communication, all within the meaning of *Bolger v. Youngs Drugs Products*
10 *Corp.*, 463 U.S. 60 (1983) and its progeny.

11 185. As a direct and proximate result of Tesla's and Musk's wrongful
12 actions, Alcon has suffered damages in an amount to be proven at trial, but in
13 excess of the jurisdictional minimum.

14 186. Alcon further alleges that Tesla's and Musk's unauthorized use of
15 Alcon's BR2049 marks and secondary meaning elements will continue unless and
16 until Tesla and Musk are enjoined. Alcon has no adequate remedy at law to
17 prevent Tesla and Musk from continuing to wrongfully violate Alcon's rights, and
18 Alcon will suffer irreparable harm unless Defendants are enjoined from continuing
19 their wrongful conduct.

20 187. Plaintiff is informed and believes and on that basis alleges that if
21 afforded a reasonable opportunity for discovery, discovery will show that
22 Defendant WBDI aided and abetted Tesla's and Musk's Lanham Act violations
23 described herein, including in that WBDI aided, encouraged and/or lent meaningful
24 support to Tesla and Musk before, during or after Tesla's and Musk's violations,
25 and with knowledge by WBDI that the acts by them were improper. In that regard,
26 Alcon specifically refers to the allegations in paragraphs 34, 85-98 and 105.

27 188. Defendants all had actual knowledge of the wrongfulness of their
28 conduct and the high probability that such acts would cause injury and/or damage

1 to Plaintiff. Despite their knowledge, Defendants intentionally pursued their
2 course of conduct, resulting in injury or damage to Plaintiff.

3 **Prayer for Relief**

4 WHEREFORE, Plaintiff prays judgment be entered in its favor and against
5 Defendants, and each of them, as follows:

6 1. On the First Claim for Relief for Copyright Infringement:

- 7 a. For a preliminary and permanent injunction against Defendants and
8 anyone working in concert with them from further copying, displaying,
9 distributing, selling, or offering to sell BR2049 or protectible elements
10 thereof in connection with Tesla or Musk, or making derivative works
11 thereof for such purposes.
- 12 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of
13 the Exhibit C/Presentation Slide 2 Image and We Robot Work and
14 underlying materials used in violation of Plaintiff's copyrights—
15 including digital copies or any other means by which they could be
16 used again by the Defendants without Plaintiff's authorization—as well
17 as all related records and documents.
- 18 c. For actual damages and all profits that Defendants derived from the
19 unauthorized use of BR2049 or, where applicable and at Plaintiff's
20 election, statutory damages.
- 21 d. For an award of attorneys' fees.
- 22 e. For an award of pre-judgment interest as allowed by law.
- 23 f. For costs of suit.
- 24 g. For such further relief as the Court deems just and proper.

25 2. On the Second Claim for Relief for Vicarious Copyright Infringement:

- 26 a. For a preliminary and permanent injunction against Defendants and
27 anyone working in concert with them from further copying, displaying,
28 distributing, selling, or offering to sell BR2049 or protectible elements

1 thereof in connection with Tesla or Musk, or making derivative works
2 thereof for such purposes.

- 3 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of
4 the Exhibit C/Presentation Slide 2 Image, We Robot Work, and
5 underlying materials used in violation of Plaintiff's copyrights—
6 including digital copies or any other means by which they could be
7 used again by the Defendants without Plaintiff's authorization—as well
8 as all related records and documents.
- 9 c. For actual damages and all profits that Defendants derived from the
10 unauthorized use of BR2049 or, where applicable and at Plaintiff's
11 election, statutory damages.
- 12 d. For an award of attorneys' fees.
- 13 e. For an award of pre-judgment interest as allowed by law.
- 14 f. For costs of suit.
- 15 g. For such further relief as the Court deems just and proper.

16 3. On the Third Claim for Relief for Contributory Copyright Infringement:

- 17 a. For a preliminary and permanent injunction against Defendants and
18 anyone working in concert with them from further copying, displaying,
19 distributing, selling, or offering to sell BR2049 or protectible elements
20 thereof in connection with Tesla or Musk, or making derivative works
21 thereof for such purposes.
- 22 b. As permitted under 17 U.S.C. § 503, for impoundment of all copies of
23 the Exhibit C/Presentation Slide 2 Image, We Robot Work, and
24 underlying materials used in violation of Plaintiff's copyrights—
25 including digital copies or any other means by which they could be
26 used again by the Defendants without Plaintiff's authorization—as well
27 as all related records and documents.
- 28 c. For actual damages and all profits that Defendants derived from the

1 unauthorized use of BR2049 or, where applicable and at Plaintiff's
2 election, statutory damages.

3 d. For an award of attorneys' fees.

4 e. For an award of pre-judgment interest as allowed by law.

5 f. For costs of suit.

6 g. For such further relief as the Court deems just and proper.

7 4. On the Fourth Claim for Relief (False Endorsement in Violation of 15 U.S.C.
8 § 1125(a)(1)(A))

9 1. For injunctive relief, including without limitation for an order mandating
10 that Defendants cease any further promotional or advertising use of
11 BR2049; that Defendants place a corrective notice or disclaimer on the We
12 Robot Work and all copies thereof putting viewers on notice that the
13 portions of the event referencing BR2049 false and misleading and that
14 BR2049 and Alcon have no relationship or affiliation with Tesla, Musk or
15 the cybercab product; and an order mandating that Defendants cease to
16 distribute any further copies of the We Robot Work or event livestream
17 that contains the BR2049 references and Presentation Slide 2.

18 2. For compensatory damages;

19 3. Defendants' profits;

20 4. Attorney fees;

21 5. Costs of suit;

22 6. Prejudgment Interest; and

23 7. Such other and further relief as the Court may deem just and proper.

24 DATED: February 13, 2025 ANDERSON YEH PC

25 Edward M. Anderson

26 Regina Yeh

27 By 

Attorneys for Plaintiff

28 ALCON ENTERTAINMENT, LLC

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38, on its claims against Defendants Tesla, Inc. (“Tesla”), Elon Musk (“Musk”), and Warner Bros. Discovery, Inc. (“WBDI”), Plaintiff Alcon Entertainment, LLC hereby demands a trial by jury of all matters triable to a jury.

DATED: February 13, 2025

ANDERSON YEH PC

Edward M. Anderson

Regina Yeh

By



Attorneys for Plaintiff

ALCON ENTERTAINMENT, LLC